

Committee against Torture

Concluding observations on the sixth periodic report of New Zealand

ADVANCE UNEDITED VERSION

1. The Committee against Torture considered the sixth periodic reports of New Zealand (CAT/C/NZL/6) at its 1292nd and 1295th meetings, held on 21 and 22 April 2015 (see CAT/C/SR.1292 and 1295), and adopted at its 1312nd and 1314th meetings, held on 5 and 6 May 2015 (see CAT/C/SR.1312 and 1314), the following concluding observations.

A. Introduction

2. The Committee welcomes the interactive dialogue held with the State party's high-level multisectoral delegation, as well as the additional information and explanation provided by the delegation to the Committee.

B. Positive aspects

3. The Committee welcomes the State party's ratification of the Optional Protocol to the Convention of the Rights of the Child on the sale of children, child prostitution and child pornography (OP-CRC-SC).

4. The Committee welcomes the legislative and administrative changes in areas of relevance to the Convention, including:

(a) Amendments to Family Court legislation, to enable faster more fluid resolutions;

(b) The introduction of Police Safety Orders, to protect women and their families when police cannot arrest someone for family violence due to insufficient evidence;

(c) The commencement of the Immigration Act 2009, that entered into force on 29 November 2010, which prohibits expulsion to a place where a person faces a risk of torture and limits the situations in which asylum seekers may be detained.

(d) The enactment of the Immigration Amendment Act 2013, which gives agencies the time needed to make enquiries into the backgrounds of groups of individuals, pending decisions on refugee or protection claims;

(e) The enactment of the Victims of Crime Reform, which aims to enhance victims' rights and role in criminal justice processes, and improve the responses of government agencies to victims of crime;

(f) The enactment of the "Vulnerable Children Act" with new measures to protect children.

5. The Committee takes note of the legislative initiatives in areas of relevance to the Convention and encourages their adoption, including the introduction of a Bill to establish Victims' Orders Against Violent Offenders, to reduce the likelihood that victims have unwanted contact with their perpetrators.

6. The Committee welcomes the efforts of the State party to give effect to the Convention, including:

(a) The release of the Children's Action Plan for Vulnerable Children, of October 2012;

(b) The adoption by the Government, in 2013, of a broadened New Zealand's definition of trafficking which now includes the "exploitative purpose";

(c) The establishment by the Government of a Ministerial Group on Family Violence and Sexual Violence in December 2014, jointly led by the Ministers of Justice and Social Development.

7. The Committee notes with appreciation the existence of a vibrant civil society that contributes significantly to the monitoring of torture and ill-treatment, thereby facilitating the effective implementation of the Convention in the State party.

C. Principal subjects of concern and recommendations

Incorporation of the Convention in national legislation

8. Bearing in mind its previous concluding observations (CAT/C/NZL/CO/5, para. 4) the Committee remains concerned that the Convention has not been fully incorporated into domestic law. The Committee further notes that judicial decisions make little reference to international human rights instruments, including the Convention. (art.2)

The Committee reiterates its previous concluding observations and recommend that the State Party should:

(a) **Enact comprehensive legislation to incorporate into domestic law the provisions of the Convention;**

(b) **Strengthen the current mechanisms to ensure compatibility of domestic law with the Convention; and**

(c) **Organize training programmes for the judiciary on the provisions of the Convention and the jurisprudence of the Committee.**

National Preventive Mechanism

9. The Committee welcomes the work of the designated five existing institutions forming the National Preventive Mechanism and coordinated by the New Zealand Human Rights Commission. However, it notes that the Children's Commissioner and the Independent Police Conduct Authority have not received sufficient resources and that the number of staff is inadequate to enable these bodies to fulfil their mandate (art. 2).

The State party should strengthen the National Preventive Mechanism (NPMs) and the five entities composing it by increasing without delay the funding available and ensure that all five entities are staffed with an appropriate number of personnel. The State party should also support the NPMs in developing and maintaining a collective identity through, *inter alia*, joint visits and joint public reports, harmonized working methods, shared expertise and enhanced coordination.

Independent Police Conduct Authority

10. The Committee is concerned at the mandate of the Independent Police Conduct Authority which does not allow this institution to fully investigate and initiate prosecution of perpetrators. The Committee is also concerned that the law leaves to the police the power to initiate investigations on the police itself, raising questions about the independence of such investigations. (art. 4, 9, 11, 13)

The State party should ensure that the Independent Police Conduct Authority is equipped with a broader mandate and full independence in order to investigate promptly, effectively and impartially all reports of violence. In particular, such investigations should not be undertaken by or under the authority of the police or military, but by an independent body.

Violence against women

11. While welcoming the measures adopted by the State party to prevent and combat violence against women (paras. 5 and 6(d) above), the Committee notes with concern reports on the persistence of violence against women, and particularly its disproportionate occurrence on Māori women. The Committee is particularly concerned at information received that while 90 per cent of the cases of sexual violence remain unreported, statistics also show that the number of applications for safety orders have decreased since 2010, even though the number of family violence investigations have increased over the same period. Moreover, the Committee is concerned at the lack of proper funding for specialist sexual violence services, including by specialists, which reflect the diversity in the States Parties' communities. (arts. 2, 12, 13, 14 and 16).

In light of the persistent occurrence of violence against women, the Committee recalls its General Comment No. 2 on implementation of article 2 by States parties, and urges the State party to redouble its efforts to prevent and combat all forms of violence against women throughout its territory by, *inter alia*:

- (a) Taking necessary measures to encourage and facilitate the lodging of complaints by victims and to address effectively the barriers that may prevent women from reporting acts of violence against them, including by ensuring that education professionals, health-care providers and social workers are fully familiar with relevant legal provisions, trained to recognize the signs of violence against women and are capable of complying with their obligation to report cases;
- (b) Ensuring the effective enforcement of the existing legal framework by promptly, effectively and impartially investigating all reports of violence and prosecuting and punishing perpetrators in accordance with the gravity of their acts;
- (c) Strengthening public awareness-raising activities to combat violence against women and gender stereotypes;
- (d) Increasing its efforts to combat violence against indigenous women;
- (e) Guaranteeing in practice that all victims benefit from protection and have access to adequately funded medical and legal aid, psychosocial counselling and social support schemes;
- (f) Removing the cultural and financial barriers to accessing protection orders by removing or reducing the costs associated;
- (g) Developing and implementing a comprehensive national sexual violence prevention strategy by further intensifying community-based approaches to combat violence against women, with the involvement of all relevant stakeholders.

Trafficking in persons

12. While welcoming the progress in combating trafficking in persons (para. 6(c) above) the Committee is concerned that human trafficking remains, however, a matter of concern, as the State party reportedly continues to be a destination country for foreign men and women subjected to forced labour and sex trafficking and a source country for children subjected to sex trafficking within the country. The Committee notes also that despite the current situation only a limited number of trafficking cases have been recently prosecuted under its anti-trafficking legislation (arts. 2, 12, 13, 14 and 16).

The State party should:

- (a) Vigorously enforce the existing legislative framework and promptly, thoroughly and effectively investigate, prosecute and punish with appropriate penalties trafficking in persons and related practices;**
- (b) Enhance international cooperation to combat human trafficking, including through bilateral agreements, and monitor its impact.**
- (c) Provide specialized training to public officials, including on the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime;**
- (d) Adopt affective means to prevent, investigate, prosecute and punish acts of trafficking, and conduct nationwide awareness-raising and media campaigns about the criminal nature of such acts;**
- (e) Provide effective remedy to all victims of the crime of trafficking;**
- (f) Provide the Committee with comprehensive disaggregated data on the number of investigations, prosecutions and sentences handed down for human trafficking, and the provision of redress to the victims.**

Arrangements for the custody and treatment of persons deprived of liberty

13. Bearing in mind its previous concluding observations (CAT/C/NZL/CO/5, para. 9) and the Subcommittee on Prevention of Torture (SPT) country visit report (CAT/OP/NZL/1, paras. 33-34), the Committee is concerned at reports that, despite remedial measures taken by authorities, overcrowding remains a problem in many places of deprivation of liberty. The Committee is concerned at reports that, in a number of places of deprivation of liberty, the material conditions and health-care services, in particular mental health services, are inadequate. The Committee is concerned at provisions of the Corrections Amendment Act 2013 which, *inter alia*, authorises mandatory strip-searching of prisoners in a broad range of circumstances. Finally, the Committee is further concerned at information received that the rate of violence between prisoners and the rate of assaults of prisoners on guards is higher in the privately-run Mt. Eden Corrections Facility than in other comparable public correction facilities. (arts. 2, 11 and 16).

The State party should strengthen its efforts to bring the conditions of detention in all places of deprivation of liberty in line with relevant international norms and standards, including *inter alia* the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules), in particular by:

- (a) Continuing to reduce overcrowding, particularly through the wider application of non-custodial measures as an alternative to imprisonment, in the light of the United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules);**

(b) Ensuring that adequate mental health care is provided for all persons deprived of their liberty;

(c) Amending the Corrections Amendment Act 2013 to the extent required to remove inconsistencies with the provision of the Convention.

While taking note of the statement made by the Representatives of New Zealand that “contract-managed prisons must comply with the same domestic laws, international standards and obligations relating to prisoners welfare and management as publicly managed prisons”, the Committee recommends that the State Party should ensure that privately-run places of detention fully comply with those laws, standards and obligations.

Indigenous people in the criminal justice system

14. While noting with satisfaction the efforts and subsequent measures taken by the State party to address the situation of indigenous people like, *inter alia*, the Turning of the Tide Prevention Strategy and the Creating Lasting Change 2011–2015 Strategy, the Committee remains concerned at information received that indigenous people continue to be disproportionately affected by incarceration. The Committee is also concerned at information received that while making up 15% of the State Party’s population, Māori comprise 45% of arrests and over 50% of prison inmates, moreover more than 60% of female inmates are Māori (arts. 2, 11 and 16).

The State party should increase its efforts to address the overrepresentation of indigenous people in prisons and to reduce recidivism, in particular its underlying causes, by fully implementing the Turning of the Tide Prevention Strategy through the overall judicial system and by intensifying and strengthening community-based approaches with the involvement of all relevant stakeholders and increased participation of Māori civil society organizations.

Excessive use of seclusion in mental health facilities

15. While welcoming the adoption of the Mental Health and Addiction Service Development Plan 2012-2017 aiming at eliminating the practice of seclusion in the State Party and the commitment by the Ministry of Social Development to the Minister responsible that all historic abuse claims with respect to that department will be closed by the end of 2020, the Committee is concerned at information received on the persistent use of seclusion in Mental Health facilities for purposes of punishment, discipline and protection, as well as for health-related reasons. The Committee further notes that a significant number of victims have been secluded for more than 48 hours and that Māori are more likely to be secluded. The Committee is concerned at information that the State Party is continuing to include in new psychiatric facilities cells specifically designed for solitary confinement. The Committee is concerned that, according to information received from non-governmental sources, sixty to seventy percent of people in detention have either a learning disability or mental illness. The Committee further notes that the State party failed to investigate or to hold any individual accountable for the nearly 200 allegations of torture and ill-treatment against minors at Lake Alice hospital. The Committee also notes the lack of relevant statistical information (art. 16, 11 and 14).

The State party should:

- (a) Limit the use of solitary confinement and seclusion as a measure of last resort, for as short a time as possible, under strict supervision and with the possibility of judicial review;
- (b) Prohibit the use of solitary confinement and seclusion for juveniles, persons with intellectual or psychosocial disabilities, pregnant women, women with infants and breastfeeding mothers, in prison and in all health-care institutions, both public and private;
- (c) Conduct prompt, impartial and thorough investigations into all allegations of ill-treatment in prisons and health-care institutions, both public and private; prosecute persons suspected of ill-treatment and, if found guilty, ensure that they are punished according to the gravity of their acts; and provide effective remedies and redress to the victims;
- (d) Compile and regularly publish comprehensive disaggregated data on the use of solitary confinement and seclusion.

Juvenile justice

16. Bearing in mind its previous concluding observations (CAT/C/NZL/CO/5, para. 8), the Committee remains concerned at the gaps in the protection of juveniles in the State party's criminal justice system (arts. 11 and 16).

The State party should take the necessary measures to ensure the proper functioning of the justice system in compliance with international standards. In particular, the State party should:

- (a) Ensure full implementation of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines);
- (b) Ensure that juvenile detainees and prisoners under 18 are held separately from adults, in line with the provisions of the Beijing Rules (rules 13.4 and 26.3) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (rules 17, 28 and 29);
- (c) Resort to alternatives to incarceration, taking into account the provisions of the United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules) and the Bangkok Rules.

Use of electrical discharge weapons (tasers)

17. While welcoming the establishment of a Community Tactical Options Reference Group to liaise over the issues relating to the use of force by the police confirming the information provided by the delegation that the use of electrical discharge weapons is tightly regulated and controlled in each jurisdiction and is subjected to oversight and scrutiny processes, the Committee is concerned at reports of cases of inappropriate or excessive use (arts. 2, 12, 13, 14 and 16).

The State party should ensure that electrical discharge weapons are used exclusively in extreme and limited situations, where there is a real and immediate threat to life or risk of serious injury, as a substitute for lethal weapons, and by trained law enforcement personnel only. The State party should revise the regulations governing the use of such weapons, with a view to establishing a high threshold for their use, and expressly prohibit their use on children and pregnant women. The Committee is of the

view that electrical discharge weapons should not form part of the equipment of custodial staff in places of deprivation of liberty. The Committee recommends the State party to provide more stringent instructions to law enforcement personnel authorized to use electric discharge weapons, and to strictly monitor and supervise their use through mandatory reporting and review of each use.

Non-refoulement and mandatory immigration detention

18. While welcoming the information provided by the State Party on the comprehensive system put into place to assist asylum seekers, the Committee is concerned at bills introduced into Parliament that would reduce some of the existing statutory standards of protection of asylum-seekers and undocumented migrants, in particular at the Immigration Amendment Act 2013, which *inter alia* allows the detention of “mass arrivals groups” of asylum seekers for up to six months, and at policies and practices currently applied in relation to persons who, irregularly arrive in the State party (arts. 2, 3, 11 and 16).

The State party should adopt the necessary measures with a view to:

- (a) Ensure full compliance with its obligations under article 3 of the Convention in respect of non-refoulement;
- (b) Ensure that detention should be only applied as a last resort, when determined to be strictly necessary and proportionate in each individual case, and for as short a period as possible;
- (c) Establish, in case it is necessary and proportionate that a person should be detained, statutory time limits for detention and access to an effective judicial remedy to review the necessity of the detention;
- (d) Adopt all necessary measures to ensure that stateless persons whose asylum claims were refused and refugees with adverse security or character assessments are not held in detention indefinitely, including by resorting to non-custodial measures and alternatives to closed immigration detention.
- (e) Ensure that effective measures are in place to identify as early as possible all victims of torture among asylum seekers and among other persons in need of international protection, and provide them with priority access to the refugee determination procedure and access to treatment for urgent conditions;
- (f) Provide a thorough medical and psychological examination and report, considering application of the procedures set out in the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), by adequately trained independent health experts, with the support of professional interpreters, when signs of torture or traumatization have been detected during the personal interviews and, on that basis, provide access to immediate rehabilitation;
- (g) Provide regular training on the procedures established in the Istanbul Protocol to asylum officers and health experts participating in the asylum determination procedure, including training on detecting psychological traces of torture and on gender-sensitive approaches.

Redress, including compensation and rehabilitation, for victims of torture

19. While welcoming the commitment of the State Party to provide compensation to victims of historic claims of abuse, the Committee is concerned at the fact that victims have not been awarded with full redress, including compensation and rehabilitation, as prescribed by general comment No. 3 (2012) on the implementation of article 14 by States

parties. The Committee further notes that the Prisoners' and Victims' Claims (Continuation and Reform) Amendment Act 2013 restricts the circumstances in which the courts are able to award compensation to prisoners victim of acts that amount to torture and ill-treatment.

Recalling its general comment No. 3 (2012), the Committee recommends the State Party to amend the provisions of the Prisoners' and Victims' Claims (Continuation and Reform) Amendment Act 2013 that might be inconsistent with the aim of the Convention. The State party should establish the legislative and structural framework necessary for ensuring that all victims of torture receive redress, including medical and psychological assistance, full compensation and the means for full rehabilitation.

Withdrawal of reservation to article 14

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

The Committee reiterates its previous recommendation (CAT/C/NZL/CO/5, para. 14) and urges the State party to consider withdrawing its reservation to article 14 of the Convention and ensure the provision of fair and adequate compensation through its civil jurisdiction to all victims of torture.

Follow-up procedure

21. The Committee requests the State party to provide, by 15 May 2016, follow-up information in response to the Committee's recommendations contained in paragraph 9 concerning the National Preventive Mechanism, paragraph 10 on the Independent Police Conduct Authority and paragraph 15 on excessive use of seclusion in mental health facilities.

Other issues

22. The Committee invites the State party to become a party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the International Convention for the Protection of All Persons from Enforced Disappearance.

23. The State party is requested to disseminate widely the report submitted to the Committee and the present concluding observations, in all appropriate languages, through official websites, the media and non-governmental organizations.

24. The State party is invited to submit its next report, which will be its seventh periodic report, by 15 May 2019. For that purpose, the Committee will, in due course, transmit to the State party a list of issues prior to reporting, considering that the State party has accepted to report to the Committee under the optional reporting procedure.
