

## NEW ZEALAND

### CAT A/48/44 (1993)

133. The initial report of New Zealand (CAT/C/12/Add.2) was considered by the Committee at its 126<sup>th</sup> and 127<sup>th</sup> meetings, on 13 November 1992 (see CAT/C/SR.126, 127 and 127/Add.2).

134. The report was introduced by the representative of the reporting State, who informed the Committee that during the period under review, and before and after that period, there had been no reports of any persons being subjected to an act of torture in New Zealand.

135. The representative then provided an overview of how the Convention was put into effect in New Zealand law. He explained that this operated at three levels. First, statements of principle were contained in the New Zealand Bill of Rights Act 1990, including its section 9 which provided that “everyone has the right not to be subjected to torture, or to cruel, degrading or disproportionately severe treatment or punishment”. Those principles formed the background against which the laws of New Zealand were interpreted and implemented. Secondly, there were provisions in the criminal law, particularly the Crimes of Torture Act 1989, which prescribed offences and penalties for the commission of torture. In this regard, he indicated that the Act defined torture in terms that closely followed those of article 1 of the Convention. It also provided the necessary jurisdictional basis for compliance with the requirements of article 5 of the Convention and amended New Zealand’s extradition statutes so as to ensure that the principle of “extradite or prosecute” contained in articles 7 and 8 of the Convention could be implemented. Thirdly, there were various statutory, regulatory and administrative procedures for the independent investigation of complaints of misconduct on the part of public officials, including the police.

136. In addition, the representative referred to some recent cases which demonstrated how the New Zealand Bill of Rights Act 1990 had been applied by the New Zealand courts, although none of those cases concerned article 9 of the Act on the right not to be subjected to torture.

137. Finally, the representative of the reporting State indicated that concern had been expressed during the period of the Gulf War in 1991, with regard to the application and interpretation of article 3 of the Convention as it related to the treatment of persons arriving in New Zealand from other countries. The New Zealand authorities had noted that, in respect of refugee applicants, there was a certain lack of clarity about the implementation of articles 2, paragraph 2, and 3 of the Convention in relation to article 33 of the Convention relating to the Status of Refugees. Nevertheless, the practice of the New Zealand authorities was that no refugee applicant should be expelled or returned to a place where there were substantial grounds for believing that he would be in danger of being subjected to torture. New Zealand was aware that its obligations under article 3 of the Convention were not confined to persons who met the definition of a refugee but also extended to persons with well-founded fears of torture on grounds other than those listed in the Convention relating to the Status of Refugees. For those individuals, special procedures were available to obtain temporary or permanent residence on humanitarian grounds in New Zealand or to appeal against deportation.

138. The members of the Committee expressed appreciation for the excellent report submitted by the State party and wished to receive more information on the constitutional and legal framework for the application of the Convention, in particular on the jurisdiction of courts of appeal and special tribunals and on the appointment of their judges. They also sought information on the number of persons who had died in prisons and asked whether the Human Rights Commission of New Zealand could investigate broader human rights problems other than those relating to discrimination.

139. With regard to article 3 of the Convention, clarification was sought as to the possibilities for an individual denied refugee status in New Zealand on the grounds of national security to be expelled to a country other than his own.

140. Concerning article 4 of the Convention, members of the Committee requested clarification as to the role and powers of the Attorney-General with regard to instituting proceedings for the trial and punishment of a person charged with torture. They also sought further information on whether any statute of limitations existed for the pursuit of complaints by the Police Complaints Attorney and the cases dealt with by that Authority.

141. In connection with articles 5 and 7 of the Convention, further information was sought on the implementation of their provisions, particularly with regard to the application of the principle of universal jurisdiction.

142. Regarding the implementation of article 6 of the Convention, members requested clarification on the provisions of sections 315 and 316 (5) of the Crimes Act of 1961, in particular with respect to the permitted length of administrative detention and the authority responsible for monitoring activities conducted by the police in accordance with those provisions. They also asked whether incommunicado detention existed.

143. Additional information was requested on the implementation of articles 8 and 9 of the Convention and, in particular, how the draft bill on mutual assistance in criminal matters met with the State party's obligations under article 9 of the Convention.

144. In connection with the implementation of article 10 of the Convention, members referred to the training and educational needs of lawyers, judges, border police and medical personnel on matters relating to torture. In addition, the usefulness of publicizing opportunities for the rehabilitation of torture victims was pointed out. It was also asked whether the Committee could receive a copy of the Police Regulations 1959 and the Police "Values Statement".

145. Concerning article 11 of the Convention, further information was sought on the legal grounds for deciding that a person who was mentally disordered should be held involuntary in a mental care institution and the procedures available for reviewing such cases. In this connection, a copy of the Mental Health Bill was requested. With regard to the placement of children or young persons in detention, clarification was sought as to the definition of a child, young person and adult.

146. In respect of article 13 of the Convention, further information was requested on the complaint mechanisms available to victims of torture by a public official.

147. With reference to article 14 of the Convention, members of the Committee requested further information on the compensation and rehabilitation offered to victims of torture. In this regard, they sought clarification as to the compatibility of the State party's reservation to this article with article 19 (b) of the Vienna Convention on the Law of Treaties. They also requested clarification on the role of and criteria applied by the Attorney General in actions relating to the awarding of the compensation. In addition, they wished to know whether civil and criminal actions for compensation could be brought simultaneously, whether a ceiling had been set on compensation and whether survivors of torture who had found asylum in New Zealand had the right to receive medical rehabilitation.

148. Concerning article 15 of the Convention, reference was made to section 20 of the Evidence Act 1908 which gave a judge the discretion to admit a confession in evidence notwithstanding that a threat had been held out to the person confessing and it was pointed out that a threat could constitute torture.

149. Replying to questions raised by members of the Committee, the representative of the reporting State explained that judges of the High Court and Court of Appeal were appointed by the Governor General. Under New Zealand law, the distinction between serious and less serious crimes depended on the court before which a case was brought; in any event, torture was a crime that would be judged by a High Court. The Court of Appeal was a permanent body consisting of six members, three of whom heard each case, and it was competent to interpret points of law or hear appeals against sentence. Jury trials were compulsory for torture offences. The representative also stated that he had no figures on the number of deaths in prison but noted that the number of suicides in prison had declined considerably from 1985 to 1991, apparently because of improved conditions for prisoners in difficulty. There had been five deaths by suicide in 1991. In addition, he indicated that the Human Rights Commission of New Zealand actively promoted human rights.

150. With regard to article 3 of the Convention, the representative considered that there was no contradiction between article 3 of the Convention and New Zealand's national security regulations. He stated, in particular, that provisional regulations had been introduced between 16 January and 30 April 1991 owing to the Gulf War. During that period two persons had been sentenced to expulsion but detained pending a review of their case. In addition, he indicated that the legal basis for the non-refoulement of persons likely to be tortured if sent back to their country was contained in section 10 of the Crimes of Torture Act and that information booklets on that requirement had been prepared for the use of frontier control officials.

151. Concerning article 4 of the Convention, the representative explained that the purpose of requiring the Attorney General's consent before proceedings could be brought under the Crimes of Torture Act was to prevent abuses but that, in the case of torture, proceedings under that Act were mandatory. He also explained that the Police Complaints Authority consisted of a lawyer appointed by the Governor General and supporting staff. At present the Authority comprised a retired High Court Judge, a High Court judge and three investigators. The Authority was empowered to receive complaints and could take action on its own initiative if it considered that a death or serious injury involving a police officer should be investigated. With respect to the number of cases dealt with by the Authority, he indicated that 462 investigations had been conducted over a period of two years, that two police officers had been brought to trial and one had been convicted. He also indicated that

52 other complaints had been upheld but no proceedings initiated and that other sanctions could be imposed, such as psychological assistance for police officers and reprimands.

152. Referring to the article 5 of the Convention, the representative indicated that it would be contrary to New Zealand's established legal practice to establish jurisdiction to deal with offences on the basis of the nationality of the victim.

153. In respect of article 6, the representative informed the Committee of safeguards to which arrests were subject. He also stated that in practice any person arrested was brought before a court within 24 hours, that the police received appropriate training and respected the law on the declaration of rights and that the practice of holding persons incommunicado did not exist in New Zealand.

154. Referring to questions raised in connection with article 8 of the Convention, he explained, *inter alia*, that the Crimes of Torture Act provided for the competence of New Zealand authorities to bring proceedings against anyone suspected of having committed an offence under article 4 of the Convention and who happened to be in New Zealand, regardless of his nationality.

155. Concerning article 10 of the Convention, he provided information on the training handbooks and other publications prepared for or distributed to the police, prison personnel and medical and nursing personnel to educate them about matters relating to the difficult situation of refugees or to prevent any form of ill-treatment and torture.

156. In respect of questions raised with regard to article 11 of the Convention, the representative informed the Committee that the new Mental Health Act of 1 November 1992 limited compulsory treatment in psychiatric hospitals, defined very carefully the rights of patients and provided for legal remedies. He also explained that under the Children, Young Persons and Their Families Act, a "child" was someone under the age of 14 and a "youth" was someone over 14 but less than 17 who had never married.

157. With regard to article 14 of the Convention, the representative indicated that the reservation entered by New Zealand was considered by his Government to be compatible with the purpose and goal of the Convention and not contrary to international law. He also explained the procedure in place for accident compensation, and stated that the term accident covered rape and torture and that such compensation did not prejudice criminal proceedings.

### Conclusions and recommendations

158. The Committee expressed its gratitude for the report, its presentation and clarifications provided by the representative of New Zealand. It considered the report to be comprehensive and objective. It also expressed its satisfaction that the report indicated that no one in New Zealand had been convicted of or charged with committing an act of torture and that there had been no report of torture having taken place in New Zealand, either in the period under review or before or since that time.

159. The Committee considered that the articles of the Convention seemed to be incorporated in

New Zealand's legislation, specifically in the Crimes of Torture Act of 1989, which had been promulgated in connection with New Zealand's ratification of the Convention.

160. The Committee during its discussions raised the issue of the State party's reservation to one of the core articles of the Convention, article 14, regarding compensation for victims of torture. The Committee expressed the hope that the New Zealand authorities would review that reservation to ensure its full compliance with the articles of the Convention.

## **CAT A/53/44 (1998)**

167. The Committee considered the second periodic report of New Zealand (CAT/C/29/Add.4) at its 326<sup>th</sup>, 327<sup>th</sup> and 334<sup>th</sup> meetings, held on 8 May 1998 (CAT/C/SR.326 and 327), and adopted the following conclusions and recommendations.

### Introduction

168. New Zealand ratified the Convention on 10 December 1989 and made declarations recognizing the competence of the Committee against Torture to receive and consider communications made in accordance with articles 21 and 22 of the Convention. Both the initial report which was presented by New Zealand on 29 July 1992 and the second periodic report were prepared in accordance with article 19 of the Convention and with the Committee's general guidelines concerning the form and content of reports. The second periodic report of New Zealand covers the period from 9 January 1991 to 8 January 1995 and provides information on some significant changes in the legislative and executive activities. Important information is included also in the basic document prepared by New Zealand on 28 September 1993 (HRI/CORE/1/Add.33).

### Positive aspects

169. Section 9 of the New Zealand Bill of Rights recognizes the rights of persons not to be subjected to torture or to cruel, degrading or disproportionately severe treatment or punishment.

170. The Crimes of Torture Act 1989 has specific and directly enforceable provisions to prohibit acts of torture. The definition of "act of torture" in the Act is in accordance with the relevant definition of article 1 of the Convention.

171. As stated in the second periodic report, the procedures for considering refugee application are implemented at present not by part-time staff, but by regular staff.

172. The Committee is satisfied that the periodic review of the clinical status of mental patients committed to mental hospitals ensures that such compulsory treatment will not violate the mental patients' right to freedom.

173. The prohibition against torture contained in the Crimes of Torture Act now is specifically included in the training manuals of prison officers.

174. The Committee views as a positive development the establishment of "Refugees as Survivors Centres".

### Subjects of concern

175. A subject of concern to the Committee is the instances of use of physical violence against prisoners of Mangaroa prison by the members of prison personnel. The allegations are that the prisoners were molested by the guards with fists and legs, they were not provided with medical

treatment and were deprived of food and proper places of detention. Although these facts, pending the results of the ongoing investigation, cannot be considered as instances of torture, they already amount to cruel and degrading treatment.

### Recommendations

176. The Committee recommends the completion of the investigation of the incidents of physical violence on prisoners at Mangarua prison. The State party should inform the Committee on the results.

177. The Committee considers it important to strengthen the supervision of the prisons to prevent the misuse and abuse of power by prison personnel.

178. The Committee considers it desirable that the State party continue its efforts to adopt the new law on extradition, which would simplify the extradition procedure and thus enable it to establish the relevant relations (treaty-based or otherwise) with non-Commonwealth countries.