



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

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COMMITTEE AGAINST TORTURE

Forty-second session

SUMMARY RECORD (PARTIAL)* OF THE 876th MEETING

Held at the Palais Wilson, Geneva,
on Monday, 4 May 2009, at 10 a.m.

Chairperson: Mr. GROSSMAN

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* No summary record was prepared for the rest of the meeting.

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The meeting was called to order at 10.05 a.m.

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

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

1. At the invitation of the Chairperson, the members of the delegation of New Zealand resumed their places at the Committee table.
2. Mr. BERESFORD (New Zealand), in response to questions asked by members of the Committee concerning the justice system, said that in line with its commitment to strengthening protection against torture, his Government had enacted the Crimes of Torture Amendment Act, paving the way for its ratification of the Optional Protocol to the Convention against Torture. The Government had directed its departments to cooperate with the national preventive mechanisms and to that end, the Ministry of Justice worked with the monitoring bodies designated as national preventive mechanisms to ensure, where appropriate, that they had sufficient funding to undertake their additional functions under the Optional Protocol. He assured the Committee that the Government would continue to provide the necessary resources in that regard.
3. As to the independence of national preventive mechanisms within the meaning of the Paris Principles, he said the Government had fully researched the issue and was confident that its funding would not in any way undermine the functional independence of those bodies.
4. There were no gaps in the monitoring regime, which covered all places of detention. Among the various bodies that had been designated as national preventive mechanisms, the Office of the Ombudsmen played a primary role in relation to the Optional Protocol. It had explicit authority to monitor psychiatric facilities and places in which asylum-seekers were detained, and also detention facilities at airports and other border terminals.
5. Turning to the issue of the legal framework for protection against torture, he confirmed that international commitments must be incorporated into domestic law. It had been common practice for New Zealand to become a party to treaties only when existing legislation, policy and practice were in line with the obligations imposed under those treaties. Any new legislation or amendments to existing laws required must be passed before ratification. Treaty obligations could also be given effect through statutory decision-making powers.
6. In the case of the Convention against Torture there had been no need for massive legislative change since New Zealand's strong common-law tradition and the separation of powers and independent judiciary already provided the necessary safeguards.
7. The query posed by the Committee as to whether a prima facie infringement of the right not to be subjected to torture could be justified under section 5 of the New Zealand Bill of Rights Act 1990, he said that in principle the rights and freedoms under that Act were affected by section 5, which did not apply to the right to be subjected to torture. The threshold of severity and purpose required to establish "torture" was so high that the justification for it was unlikely to exist. He referred to paragraph 14 of the periodic report, which reiterated the Government's view that the prohibition against torture was absolute and not amenable to reasonable limitations.

8. He confirmed that the Bill of Rights Act was not supreme law and although Parliament could technically adopt legislation that was inconsistent with its obligations under the Convention, the Government was confident that such action would not be taken, given New Zealand's strong opposition to the practice of torture.

9. Concerning the application of the Convention, he said that it applied to all persons under its jurisdiction, including military and police personnel, and drew the attention of the Committee to paragraph 68 of the written replies to the list of issues (CAT/C/NZL/Q/5/Add.1).

10. Regarding the independence of the Independent Police Conduct Authority, he said that the Authority did not use current members of the police to carry out serious investigations. If it decided not to act on a formal complaint of torture, the individual concerned could apply to the courts to have the decision reviewed. He agreed that it would be useful to incorporate the Authority's ability not to action an historical complaint of torture into law in order to remove all doubt, but stressed that the Government would first wish to conduct an in-depth analysis of the matter.

11. With reference to the question about decisions by the military not to put on trial a member of the armed forces accused of committing torture, he said that serious incidents involving military personnel could be referred to the New Zealand police, which would be required to investigate the allegation. Under the existing process for handling complaints, it was possible for a single incident to be investigated by various bodies, each of which served a distinct purpose. He also explained that protocols had been developed to avoid overlap in judicial proceedings.

12. Turning to the questions about children and young persons, he said that the police were fully aware of the need to separate children from adults in detention facilities. A referendum on light corporal punishment was scheduled for July/August 2009, but it would be only indicative and therefore not binding on the Government.

13. On the subject of sexual exploitation of minors, he assured the Committee that his Government took the protection of children and young people very seriously. Since 2006 the Crimes Act 1961 had included a provision making it an offence to deal in persons under 18 years of age for, inter alia, sexual exploitation. New Zealand was one of several countries that had passed legislation to enable the prosecution of its nationals or residents who engaged in sexual conduct or activities with a child in another country. National laws on extradition and mutual legal assistance supported that focus and provided for cooperation between New Zealand and foreign law enforcement agencies.

14. Under New Zealand law, it was irrelevant that, by reason of the age of the young person, the act was lawful in the country in which it took place. The minimum age of criminal responsibility was set at 10 years for all offences. However, children could be subject to criminal prosecution only for murder and manslaughter at 10, and at 14 for other offences. There were no plans to raise the age of responsibility.

15. He confirmed that there was currently a bill before Parliament to extend the jurisdiction of the youth court to include 17-year-olds. The new Government had not yet decided whether it would support the Bill as drafted.

16. With regard to the training of persons responsible for the detention of individuals, he confirmed that human rights formed part of the training programme for all correctional staff, police officers and others. Much emphasis had been placed on providing current, relevant and effective training, which was an ongoing process, and law enforcement officials received regular updates on legislative developments.

17. Medical professionals, especially those working in psychiatry, were also given regular training in the detection of cases of mistreatment. Qualified lawyers were assigned to prisoners suffering from mental illnesses to advise them on their rights and, as stated in paragraph 106 of the written replies, prisoners were granted access to the services provided by the district inspectors at no cost. The inspectors were lawyers appointed by the Ministry of Health to ensure respect for the rights of detainees.

18. The Committee had drawn attention to the disproportionate number of Maori prisoners. That was also a matter of deep concern to his Government. A number of initiatives had been launched in response to that situation, and further details were listed in the written replies.

19. Turning to the issue of terrorism, he said that the Law Commission's ongoing inquiry into the preservation of public safety and security covered some aspects of the offences under the Terrorism Suppression Act 2002, but no conclusions had been reached to date.

20. In recognition of the need to alter police and enforcement practices, particularly after a controversial operation carried out in October 2007, he said that on the basis of constant liaison between the police and the affected Maori groups, a joint programme of action had been developed to address the main concerns. The results of that programme would be included in a review of internal systems and processes employed by the police.

21. With respect to the reservation to article 14, he referred to paragraph 128 of document CAT/C/NZL/Q/5/Add.1, which stated that work on New Zealand's compliance with that article was still under way. Nevertheless, compensation was available through the Bill of Rights Act and other statutory schemes. Although the Prisoners' and Victims' Claims Act 2005 imposed restrictions on the ability of courts and tribunals to award compensation, it did not extinguish the right to compensation, but the courts must be satisfied that the prisoner had made reasonable use of available complaints processes and exhausted all remedies.

22. The use of the taser had been under scrutiny, and the Government was keen to ensure that use followed international best practice. The introduction and future use of the taser had been introduced through a democratic and transparent process involving key community stakeholders. The operations procedures contained several safeguards to ensure that the taser was not used inappropriately and was operated only by trained, certified staff. They were not intended to be carried by police officers on a routine basis and could only be employed when an officer honestly believed that its use was warranted. The operating procedures did not specifically restrict the use of the taser by age since age was not necessarily a barrier to violent behaviour.

23. Ms. GWYN (New Zealand) said, in response to a request for clarification on the frequency with which the consent of the Attorney-General had been sought for the prosecution of persons following allegations of torture, said that there had indeed been a number of such allegations, mainly as civil claims for compensation. None of those claims had been upheld or found to

warrant prosecution by the courts. Allegations of ill-treatment by prison and police officers had concluded in civil findings of lesser human rights breaches and in some cases the perpetrators had been prosecuted.

24. Since no allegation had provided a basis for prosecution under the Crimes of Torture Act 1989, there had been no instance in which the Attorney-General's consent had been sought. She took the opportunity to cite the example of an attempt to seek prosecution of a former Israeli military officer under the similarly structured provisions of the Geneva Conventions Act 1958, which would have required Attorney-General consent as an extraterritorial prosecution, but since it had lacked sufficient evidence, it had not reached the stage of a consent decision.

25. It had been well established in New Zealand law that legislation would be interpreted in accordance with the relevant international instruments, and in the case of the Crimes of Torture Act, which had been specifically enacted to give effect to the provisions of the Convention, that obligation was even clearer. The Attorney-General was obliged by law to act in compliance with the Convention.

26. She confirmed that there was no mechanism which provided that an allegation of torture, even when it appeared to be well founded, could be brought to court without the consent of the Attorney-General. Moreover, there was no recourse against the refusal of an Attorney-General, the senior Law Officer, to consent to a prosecution. In practice, the Solicitor-General, the junior Law Officer, exercised all Law Officer functions relating to the prosecution process. Apart from torture, a number of criminal offences required the consent of the Attorney-General. As noted in the report, the requirement for such consent reflected the gravity of the act in question.

27. There had been a question whether there was recourse from a decision of the Independent Police Conduct Authority not to take action on a complaint of torture by the police. In reply, she said there was no such specific recourse available to a complainant under the Independent Police Conduct Authority Act 2007. However, a complainant might institute private civil or criminal proceedings against the police.

28. In the case of decisions by the military not to try a member of the armed forces by court martial for an alleged offence, she said that, under the Armed Forces Discipline Act 1971, decisions on filing charges were the responsibility of the commanding officer who was duty bound to record charges if they were considered well founded. However, there were other procedures, for which she provided details, that could be pursued if the commanding officer did not wish to press charges.

29. With regard to the extradition of persons at risk of torture, she said that the Extradition Act 1999 expressly prohibited extradition of persons who might be subjected to torture if they were returned to the country from which they originated.

30. There had been some delay in investigating claims of abuse in psychiatric hospitals and social welfare homes, as required under articles 12 and 13 of the Convention, because of the large number of court proceedings for damages by former residents and patients of public and private care institutions and hospitals. There had been a total of 500 claims which related to a broad range of alleged incidents spanning a 30-year period. Many of the claims had been heard

in the courts, and the Government intended to settle compensation claims which were of merit. Most claims, however, had been the subject of factual disputes that should be determined through the courts.

31. Procedures had been established by the Government to investigate and compensate patients who claimed to have been mistreated while they had been in the Child and Adolescent Unit at Lake Alice Hospital between 1972 and 1977. The Government considered that the current claims did not provide sufficient evidence to warrant such procedures, and in the circumstances of the claims to date, the claimants' evidence was best assessed by the courts. Persons who believed they had been victims of ill-treatment were entitled to refer complaints to the Health and Disability Commissioner, an independent officer with competence to bring proceedings, or to the police for alleged cases of criminal misconduct. Independently of the compensation proceedings, claimants were in no way prevented from receiving social assistance from the Government. She also wished to stress that successful support services had been provided to former patients and the Government had recently established the Listening and Assistance Service, which would provide the opportunity for participants and their families to discuss their concerns and experiences with a qualified panel.

32. Under section 29 of the Evidence Act, judges must exclude statements unless satisfied that they were not influenced by oppression, which it defined as oppressive, violent, inhuman or degrading conduct towards, or treatment of, the defendant or another person, or a threat of conduct or treatment of that kind. The shadow report's assertion that that Act was in breach of the Convention was wholly inaccurate. The report referred to the general balancing test applicable under section 30 of the Act. That had no bearing on section 29 and raised no issue under the Convention.

33. In the case of Mr. Ahmed Zaoui, her country had not paid him compensation as he had publicly agreed that there were valid grounds for the security certificate issued following his arrival and that his detention had been justified. The certificate had been withdrawn when the relevant circumstances had changed. His segregation from other prisoners had reflected security concerns and the need to separate him from convicted prisoners; it had not amounted to solitary confinement.

34. With regard to violence against women, the supplementary written information provided by her delegation covered the use of statistics and disaggregated data to inform and target policing more effectively and, also, outlined the steps being taken to implement the concluding observations of the Committee on the Elimination of Discrimination against Women on her country's sixth periodic report (CEDAW/C/NZL/CO/6).

35. Ms. HYNDMAN (New Zealand) said that her country's Immigration Bill fully reflected its obligations under the Convention, and articles 3 (1) and 3 (2) of the Convention were reproduced in its clauses 120 (1) and 120 (3) respectively. Clause 153 (4) of the Immigration Bill also stipulated clearly that no person could be deported to a place where there were substantial grounds for believing that they would be in danger of being subjected to torture. Persons seeking asylum in her country under article 3 of the Convention were normally recognized as refugees, although an administrative process existed to deal with claims of risk of torture when such issues were raised.

36. Because New Zealand was geographically isolated and small, the proportion of illegal immigrants was low and the figures were highly accurate. The majority of people refused entry at the border were not asylum-seekers and left voluntarily; the dedicated waiting facilities for such cases had recently been upgraded. Asylum-seekers were not detained at the border because they had made an asylum claim; although some were detained, on the basis of assessed risks, the majority were not detained at any point during consideration of their claim.

37. Warrants of commitment were required in order to detain asylum-seekers, either in a low-security centre or in a correctional facility; only those liable to abscond, commit criminal acts or pose a security risk were detained in correctional facilities. Decisions to detain were based on identity or character concerns and took into consideration possible risks to the integrity of the immigration system or to national security. Operational instructions on the detention of asylum-seekers had been revised in 2003 and were consistent with the Guidelines on Detention of Asylum-Seekers issued by UNHCR, as were detention practices.

38. As distinct from asylum claims, individuals who had entered the country on temporary permits could lodge humanitarian appeals against their removal within 42 days of expiry of their permits. Most of those required to depart or to be removed did so voluntarily, but some were detained if likely to abscond before removal; some such cases would be failed asylum-seekers. Some of those awaiting removal might file new asylum claims, which would delay their removal. In rare cases, foreign nationals might also be detained for deportation if they posed a risk to security or had been convicted of specific serious offences.

39. Under the new legislation, detained asylum-seekers retained the right to habeas corpus, the right to private discussions with a lawyer, the right to an interpreter and the right to legal assistance as appropriate. Some 30 per cent of asylum claims were successful. The majority of failed asylum-seekers were from China and India. Although some claims for protection under article 3 had been made, none had been substantiated to date.

40. Her country did not keep a list of "safe" third countries or remove individuals to third countries. Moreover, it had sought no assurances that individuals would not be tortured in a country to which they had been removed as it did not send foreign nationals to countries where there were substantial grounds for believing that they would be tortured.

41. Although her country was not a party to the Convention relating to the Status of Stateless Persons, the legislative mechanisms that responded to statelessness included the Citizenship Act, which provided for the grant of citizenship in certain cases. Moreover, stateless persons at risk of persecution for one of the reasons given in the Convention relating to the Status of Refugees were recognized as refugees.

42. With regard to the use of classified information, the rights of claimants and information relating to claims and appeals were well protected.

43. The Immigration Bill would require New Zealand nationals with one or more other nationalities who chose to enter the country using another country's passport to hold a visa indicating that they were New Zealand citizens with unlimited rights to enter the country.

44. Mr. MONK (New Zealand) said that the review conducted by the Justice Department following the incidents at Mangaroa prison in 1993 had led to the establishment of the Department of Corrections in 1996 and the formalization of the relationship with the Office of the Ombudsmen and the involvement of that Office in dealing with prisoner complaints. The Department of Corrections had developed new legislation on offender management issues that set out clearly the purpose of the corrections system and the need for humane treatment, in addition to prisoners' minimum entitlements in line with the United Nations Standard Minimum Rules for the Treatment of Prisoners. It had given prisoners greater scope for complaints and made explicit the policy that all complaints of assault or physical abuse by prison officers were to be referred to the police.

45. No charges had been pursued against the staff involved in the incidents and the employment actions against them had not withstood external scrutiny. However, the Attorney-General had apologized to the prisoners involved and reported that their claims had been settled in 2000. Although the Mangaroa incidents were regrettable, the lessons learned had been used to build a stronger prison service focused on fair treatment of prisoners and prisoner rights.

46. Detention conditions for detainees under the Immigration Act met the applicable United Nations standards. The relevant domestic legislation provided that such detainees must be treated as accused prisoners in conformity with article 10 of the International Covenant on Civil and Political Rights; they were kept separate from, and under better conditions than, other prisoners. The Department of Corrections had established a separate section to manage the anticipated expansion of prison capacity over the coming decade; although the scale of the expansion represented a major challenge, the Department was confident of its ability to mitigate the associated risks and to ensure that inexperienced staff received appropriate training.

47. The Department of Corrections provided primary physical and mental health care in prisons. In more severe cases of mental illness, it brought in forensic mental health teams from the mainstream health systems, while prisoners needing inpatient care were transferred to an external forensic inpatient unit. The mental health services available to prisoners were equivalent to those generally available to the population. The Department of Corrections had made efforts with the Ministry of Health to improve prisoners' access to mental health services and to address their wider needs, including substance abuse, as it was recognized that doing so could reduce crime and increase public safety.

48. A mental health screening tool that could identify the mild to moderate mental health needs of prisoners had undergone trials and would be introduced once funding became available. Meanwhile, all prison officers received training on recognizing the signs of mental illness as part of the suicide awareness course. Staff working in at-risk units housing mental patients received additional advice and training from external forensic medical health services.

49. The current practice of using waist restraints on prisoners during prison escort reduced the risk of violence among prisoners in transit. The restraints were not uncomfortable and prisoners preferred to use them as they improved safety. New prisoner transport vehicle standards had recently been adopted and required all such vehicles to have single occupant compartments; the waist restraint policy would be redundant once existing vehicles were replaced, when it would be reviewed. All prisoners under 18 years of age were transported in separate compartments from adults and all wore waist restraints for safety reasons.

50. Prisoners serving short custodial sentences were normally held in prison cells and were not required to serve their sentence in police cells. When it was necessary for prisoners to be held in police cells for practical reasons, efforts were made to ensure that they received the minimum legal entitlements.

51. Non-voluntary segregation and solitary confinement were distinct regimes. Non-voluntary segregation was used to protect other prisoners from direct or indirect harm resulting from a breakdown of prison order and discipline; prisoners so segregated retained their minimum entitlements and privileges but their contact with other prisoners in the unit was restricted. In New Zealand prisons, a significant proportion of prisoners belonged to organized gangs; tension and the threat of gang violence were therefore daily realities. Non-voluntary segregation was used to separate the perpetrators of violence from intended victims and so reduce violent incidents. Every effort was made to reduce the tension and violence that caused prisoners to be placed on non-voluntary segregation, and prisoners were encouraged to demonstrate positive behaviour in order to be removed from the regime. His country did not operate a regime of solitary confinement.

52. Mr. KOVALEV, Country Rapporteur, said that he would be interested to know if anyone could file a case before the courts alleging acts of torture by the police. It would also be useful to know the criteria used to determine whether asylum-seekers were held in a special centre or in a correctional facility, and whether only those deemed to be a criminality or security risk were detained in the latter.

53. Regarding illegal immigrants, the delegation had stated that New Zealand did not seek diplomatic assurances that an individual would not be tortured in the country to which he or she was removed because it did not extradite people to countries where such treatment might be applied, and that it did not maintain a list of "safe third countries." Nevertheless, the Committee considered it important to have such a list in order to know where people could be sent without risk of torture.

54. Ms. KLEOPAS, Alternate Country Rapporteur, said it was unclear what the situation was in New Zealand regarding the applicability of all the provisions of the Convention, because it appeared that it was left to the discretion of the courts to decide whether torture was a crime. However, it should be recalled that no pretext, such as exceptional circumstances or the statute of limitations, could be claimed to preclude prosecution of acts of torture.

55. The delegation had stated that New Zealand was firmly committed to the Convention, which formed part and parcel of domestic law; it had also mentioned that, before ratifying an international treaty, the Government verified that no domestic law was contrary to it. It would be useful to know whether an appellate court had ruled that the provisions of international treaties prevailed over domestic law.

56. The Committee would like to know whether New Zealand intended to maintain its reservation to article 37 (c) of the Convention on the Rights of the Child with regard to child offenders.

57. The prison complaint mechanism appeared to be accountable to the Minister of Justice rather than to Parliament, creating an appearance of bias. The question also arose of the

objectivity of the mechanism, since the police authority that investigated prison complaints was also responsible for investigating complaints of torture against the police. The delegation should clarify whether the said authority reported the results of its investigations directly to the Attorney-General.

58. New Zealand had lodged a reservation to the Convention in that it reserved the right to award compensation to torture victims referred to in article 14 only at the discretion of the Attorney-General. Consequently, the Committee would appreciate confirmation that all alleged victims of torture had an enforceable right to damages.

59. Evidence obtained by means of torture could reach the cognizance of the courts and the Committee wished to know the procedure for evaluating such evidence. If it was proved that evidence had been obtained through torture, would there be a trial within a trial to evaluate such evidence?

60. Mr. WANG Xuexian said it appeared that the New Zealand Government had no plans to raise the age of criminal responsibility. However, the Committee believed it inappropriate to consider that children under 11 years of age could be criminally responsible, and had consistently recommended raising the minimum age to 14 or 15. Special concern existed in the case of New Zealand because the Maori population comprised a large proportion of young people; such a low age was therefore detrimental to indigenous groups.

61. It was not considered necessary for the New Zealand police to carry weapons, so the Committee was extremely concerned that it was now deemed necessary to equip them with tasers, which had been shown to cause severe pain and even death; consequently, the use of tasers could be considered torture. Moreover, the delegation had referred to tasers as “less lethal” weapons, which suggested that they might be used more indiscriminately.

62. Ms. BELMIR said that, in countries that recognized the rule of law, each individual who held power was accountable for his acts. Therefore, if the Attorney-General refused to institute proceedings for torture, was he above the law or should he stand down? There must be a means of resolving such a situation in order to ensure access to justice and, above all, the applicability of the Convention in the State party. She would welcome a more detailed response on the matter.

63. In 2002, the Ombudsman had recommended that video surveillance be introduced in prisons. Was such surveillance also used in interview rooms to avoid coercive questioning?

64. The establishment of a minimum age of criminal responsibility related to determining the age at which a child brought before the courts could be deemed to have a certain maturity or level of awareness of responsibility. It appeared that relevant draft legislation had been introduced, and the Committee trusted that New Zealand would make every effort to raise the age of criminal responsibility soon.

65. She was not satisfied with the assurances given by the delegation with regard to the issue of tasers, a weapon whose use had had very unfortunate consequences in many countries. The State party should examine the issue very thoroughly in order to ensure that lives were not lost as a result of making tasers available to the police.

66. Ms. SVEAASS said that children in psychiatric hospitals and similar institutions were particularly vulnerable to sexual abuse; it was therefore very important to monitor that type of institution. The delegation had referred to the training activities in correctional institutions, particularly for dealing with individuals with mental health problems, and the Committee would be interested to learn more about the screening instruments that New Zealand was planning to introduce. It would be useful to know how the new immigration bill affected children, and whether their rights to schooling and health care were respected while their immigration status was being decided.

67. Mr. Mariño MENÉNDEZ said he failed to understand New Zealand's reasoning that, since children could be dangerous, using tasers against them was justified. The Committee was concerned about police use of tasers because they were a new and little-tested weapon that could be lethal and would probably have to be subjected to much more detailed regulation in order to meet human rights protection standards.

68. The Crimes of Torture Act 1989 provided that no proceedings for torture could be instituted without the consent of the Attorney-General; however, the Convention imposed on States parties the obligation to file charges in cases of presumed torture. What legal provisions were in place should the Attorney-General not consent to file charges? To whom was he accountable? And would he be removed?

69. Another matter that had received a partial reply was the client-lawyer relationship, specifically in the case of Mr. Ahmed Zaoui. The Committee would like to know whether a person subject to a security risk certificate could enjoy an unrestricted relationship with his lawyer or whether constraints existed. It appeared that the relevant rules were being reviewed because more detailed anti-terrorist legislation was being drafted in order to establish a balance between State security and respect for human rights. Further information would be appreciated.

70. The CHAIRPERSON asked whether New Zealand had contemplated increasing the presence of Maoris in the police and other security forces. He also wanted to know whether the Refugee Status Appeal Authority was an administrative body and who its members were.

71. The international conventions ratified by a country should have precedence over domestic law and, since reparation was a core obligation of the Convention against Torture, it could be considered that a reservation to article 14 was incompatible with the Convention's object and purpose and therefore unacceptable.

72. According to information received from an NGO, the immigration bill currently before Parliament ruled out bail for any offence whatsoever and prevented the courts from considering length of detention as a factor in ordering a person's release, effectively eliminating the right to habeas corpus and allowing indefinite detention. The Committee would appreciate further information on the rationale behind that measure.

73. The same NGO had reported that, during monitored police trials of taser use, most of the targets had been Maori people and people with mental health problems. Again the Committee would appreciate the delegation's comments on that information.

74. Mr. MACKAY (New Zealand), responding to comments concerning the criminal age of responsibility, reiterated that children aged 10 could only be subject to criminal prosecution for homicide. The age of criminal responsibility in respect of lesser crimes was higher. On the use of tasers, his delegation had taken due note of the Committee's concerns. Clearly, like any other weapon, tasers could be used improperly. It was to prevent such abuse that the operational trial had been conducted and clear restrictions had been established with regard to when and by whom tasers would be used. Only officers who had received special training would be allowed to use them.

75. Ms. HYNDMAN (New Zealand) said that asylum-seekers would never be detained in a correctional facility simply because of their asylum petition. They would only be detained for reasons relating to criminality and security or if they were already imprisoned for a criminal offence. If asylum-seekers were deemed likely to commit an offence or pose a national security risk, then they might be detained in a prison. A person already in prison could submit an asylum claim, which would be evaluated on the basis of the appropriate legal provisions, but doing so did not necessarily mean the asylum-seeker would be released from prison before completing his or her sentence.

76. As to whether New Zealand maintained a list of "safe third countries" for the removal of foreign nationals, it was her Government's policy to deport people only to their country of nationality. However, it monitored information from UNHCR concerning countries to which individuals should not be deported and would not send anyone to a country where he or she faced a real risk of being subjected to torture.

77. Concerning the rights of unaccompanied minor immigrants, if no family members or suitable guardians could be found in New Zealand, such minors would come under the protection of the government department responsible for children and young people. Children of families seeking asylum were often held at the Mangere Accommodation Centre, where they attended school and received free health care. Asylum-seekers had access to publically-funded health care on the same basis as citizens. Children whose immigration status was irregular could be granted a limited permit which would enable them to enrol in school.

78. The Refugee Status Appeal Authority was an independent statutory authority. The supplementary written information provided by her delegation contained information on its functions.

79. With regard to the questions concerning the immigration bill and the right of habeas corpus, all cases of people challenging their long-term detention had involved nationals of a single country who had previously claimed refugee status and had exhausted their claim and appeal rights. Their country of origin did not issue travel documents to its nationals unless they applied personally. Some of those people had delayed their removal by refusing to apply for travel documents, thereby seeking to create an exceptional circumstance on the basis of which they could seek release from detention. The immigration bill established that length of detention did not in itself constitute an exceptional circumstance, but it did not extinguish an asylum-seeker's right to appeal detention on any other grounds.

80. Mr. MONK (New Zealand) said that a mental health screening tool currently being developed was designed to detect mild to moderate mental health needs, which often went undiagnosed in the prison population. He would provide the Committee with additional written information about that tool.

81. The overrepresentation of Maori people in the prison population was one of the main challenges confronting his Government. To address it, the Department of Corrections had developed a specific Maori strategic plan within its overall strategic plan and had introduced culturally sensitive rehabilitation programmes and Maori focus units, which used Maori culture to motivate and rehabilitate prisoners on the basis of a therapeutic community model. The Department had also developed a visitor policy through which Maori elders assisted Maori prisoners in establishing and maintaining ties with their local tribes. An initial evaluation of those initiatives indicated that they were helping to reduce reoffending. In addition, so that the staffing of prisons would better reflect the ethnic composition of the prison population, the Department was endeavouring to increase the proportion of Maori staff.

82. Mr. MACKAY (New Zealand) said that the New Zealand police were also applying a multicultural and multi-ethnic approach to the recruitment of new officers.

83. Ms. GWYN (New Zealand) said that she had no knowledge of any Supreme Court ruling that New Zealand's domestic law was contrary to any international treaty, but undertook to investigate and, if appropriate, provide the Committee with further information. With regard to the Evidence Act, the procedure for determining whether or not evidence was admissible was "voir dire", which was indeed a trial within a trial.

84. Ms. KLEOPAS enquired whether the Act stated clearly that any evidence obtained through torture, including mental torture, would be excluded.

85. Ms. GWYN (New Zealand) said section 29 of the Act stipulated that a judge must exclude evidence unless he or she was satisfied beyond reasonable doubt that it had not been influenced by oppression. She had quoted the Act's definition of "oppression" in paragraph 32 of the present summary record. The onus of proving that a statement by a defendant had not been influenced by oppression was on the prosecution.

86. The Attorney-General was the chief Law Officer of the Crown. As such, he was not answerable to Parliament or to any judge. He was responsible for balancing the tensions inherent in the administration of criminal justice, i.e. the tensions between, on the one hand, the responsibility to investigate, prosecute and punish those who behaved in a criminal manner and, on the other, the responsibility to ensure that the due process rights of those suspected or accused of criminal conduct were respected. It was because a decision to prosecute had profound consequences that consent must be obtained from the Attorney-General before prosecution could commence.

87. Allegations of torture and other types of ill-treatment could be brought before a court in one of two ways: as criminal charges, in which case the consent of the Attorney-General would be required in order to prosecute, or as civil claims for compensation. The latter would be subject to the same procedures, rules of evidence and statutes of limitations as any other civil claim.

88. In view of time limitations, she would provide a written reply to the Committee's questions about access to classified security information.

89. Mr. BERESFORD (New Zealand) assured the Committee that his Government was well aware of the concerns surrounding taser weapons and was committed to ensuring that they were not misused. Only officers certified in their use would be allowed to carry tasers and they would not do so routinely: prior consent from a superior officer would be required. During the taser trial, the weapons had been drawn in 128 incidents, but had been discharged on only 19 occasions. On each of those occasions, the person involved had been assessed by a medical practitioner and no serious injuries had been recorded. His Government was aware that a disproportionate number of the persons targeted in the 128 taser incidents had been Maori and Pacific Islanders or persons with mental health problems; it was working with those two groups to address the underlying causes of that situation.

90. Concerning the use of tasers on minors, as his Government's replies to the Committee's list of issues stated, before using a taser, the officer involved must have an honest belief that the subject was capable of carrying out the threat posed. In other words, the officer must decide, on the basis of criteria that included age and size, whether the use of a taser was a proportionate response to a threat.

91. His Government was committed to withdrawing New Zealand's reservations to the various human rights treaties and regularly reassessed whether they remained necessary. It expected shortly to withdraw the reservations to articles 10 (2) and 10 (3) of the International Covenant on Civil and Political Rights and article 37 (c) of the Convention on the Rights of the Child. As to article 14 of the Convention against Torture, the Government would withdraw its reservation as soon as it was certain that its domestic legislation regarding compensation for torture victims was fully in line with the Convention.

92. Owing to time constraints, the CHAIRPERSON requested that the delegation submit the remainder of its responses in writing.

93. Mr. MACKAY (New Zealand) said that his delegation had found the dialogue with the Committee very beneficial and looked forward to receiving its concluding observations.

The discussion covered in the summary record ended at 12.15 p.m.