



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

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COMMITTEE AGAINST TORTURE

**WRITTEN REPLIES BY NEW ZEALAND TO THE LIST OF ISSUES  
(CAT/C/NZL/Q/5) TO BE TAKEN UP IN CONNECTION WITH THE  
CONSIDERATION OF THE FIFTH PERIODIC REPORT OF NEW ZEALAND  
(CAT/C/NZL/5)\* \*\***

[10 March 2009]

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not edited before being sent to the United Nations translation services.

\*\* The annexes to the present report are available for consultation from the Committee secretariat.

## Introduction

1. This report provides New Zealand's responses to the list of issues to be considered by the Committee Against Torture during the examination of the fifth periodic report of New Zealand (CAT/C/NZL/5) ("CAT Report").

## Article 2

### Commissioner of Police's "General Instructions" and the use of force (question 1)

2. The Committee asks for detailed information on the content of the General Instructions issued by the Commissioner of Police for police officers with regard to the use of force in arresting and detaining offenders, in particular the use of restraining holds.

3. The Commissioner of Police has issued four General Instructions in relation to the use of force in arresting and detaining offenders. The most significant relates to the use of the carotid hold as a means of controlling a violent person. This General Instruction makes it clear that: *"...even when correctly applied the carotid hold is potentially lethal and must not be used where circumstances do not justify its use, nor where a lesser level of force would be effective in achieving the necessary control of a violent person."*

4. The General Instruction outlines the situations in which use of the carotid hold is permissible, including situations where a Police employee acts in self-defence or in the defence of others, and where a less violent method of defence is not reasonably available. Use of the carotid hold may also be justified to prevent the escape of a person who poses a risk to public safety, where a less violent means of preventing that escape is not reasonably available.

5. The General Instruction mandates that:

(a) The hold should only be applied for the period needed to bring the person under control;

(b) The person being held shall be subject to constant monitoring from the time of application until full recovery;

(c) Where the person does not appear to be recovering, appropriate medical measures must be undertaken immediately;

(d) A Tactical Operations Report shall be submitted where any carotid hold, any attempted carotid hold, or any force is applied to the neck area of a person;

(e) All persons who have had the carotid hold applied to them must undergo a medical examination at the first opportunity following the incident.

6. All frontline Police employees must undergo training in the carotid hold, and must maintain the currency of that training annually. The General Instruction, as noted in paragraph 33 of the CAT Report, reiterates that the use of a "choker" or trachea hold, that is force across a person's throat, is forbidden.

7. The other General Instructions that relate to the use of force are:

(a) Directions on the use of oleoresin capsicum (OC) spray. The spray cannot be used except where less forceful means are likely to be ineffective, and the operator must be satisfied that the person is resisting or attempting to prevent police from lawfully controlling or arresting them;

(b) Directions on the use of tactical options. Where force is used on a person, (whether or not person is arrested), a “Tactical Options Report “ must be given to the Police employee's supervisor. The report must detail the type and degree force used;

(c) Directions on the justified use of police dogs. Prior to release of a dog the handler must be satisfied that use of the dog is justified in the circumstances. The handler must, except where it is not possible to do so, call on a person to desist, and must minimise the force applied to the person by the dog. Also, where possible, the release of dog should not take place without prior consultation (among attending police employees).

### **Status of police legislation and regulation (question 2)**

8. The Committee asks for updated information on the status and content of the Police Bill which the Government intended to introduce to Parliament in 2008. The Committee also seeks an indication of progress made with respect to the comprehensive review of the Police Act 1958 and the Police Regulations 1992.

9. The Policing Act 2008 came into force on 1 October 2008 (a copy is available at <http://www.legislation.govt.nz>). The Police Act 1958 and any Regulations made under that Act are now repealed. The purpose of the Act is to provide for policing services in New Zealand, to state the functions, and provide for the governance and administration of the Police.

10. Generally, the Policing Act contains provisions relating to the functioning of the Police as a national force. Broadly, the Act covers:

(a) The roles of Commissioner, Deputy Commissioners, constables, authorised officers, Police jailer and escort, Police guard, Police specialist crime investigator, Police transport safety enforcement officer, and other Police staff;

(b) Employment relationships and industrial relations of Police employees;

(c) The use of biometric information for pre-employment vetting and crime scene elimination;

(d) Various offence provisions;

(e) The ability to take identifying details of a person in certain circumstances;

(f) Powers to detain intoxicated people;

(g) The use of the term “Police”;

(h) International policing provisions;

(i) Regulation-making powers;

(j) The use of Police dog provisions and offences.

11. Further information on consultation and policy development undertaken to create the Policing Act is available at the website <http://www.policeact.govt.nz>.

### **Rights of those in custody and legislation against terrorism (question 3)**

12. The Committee asks for updated information on the rights of the persons detained in police custody, in particular their right of access to a counsel and to a doctor of their choice, to be informed of their rights and to inform their family promptly of their detention. The Committee asks whether any new legislation against terrorism has affected these rights.

13. In New Zealand all detained persons have the right to consult and instruct a lawyer without delay. These rights are protected in the New Zealand Bill of Rights Act 1990. Police employees must provide detained persons an up-to-date list of available lawyers and are to permit them to contact a lawyer. Lawyers (or their clerks) may access their clients at all times. To the extent possible, conversations between lawyers and clients should be conducted in private.

14. In general, Police doctors and other health professionals attend the medical and health needs of persons in custody as necessary. However, where a person in custody seeks medical attention from a specified doctor, the Police will arrange for a Police doctor to liaise with that doctor, with a view to facilitating contact between the person in custody and their chosen doctor.

15. Where the person detained is aged under 17 years of age, his or her parent or caregiver must be informed as soon as possible. Where the person detained is 17 years or over, Police generally seek permission of the person in custody to notify a relative or friend of that person.

16. Recent legislation against terrorism (such as the Terrorism Suppression Act 2002, (a copy of which is available at [www.legislation.govt.nz](http://www.legislation.govt.nz))) has not affected these rights.

### **Segregation of prisoners (question 4)**

17. The Committee notes that the Corrections Act 2004 requires that decisions to segregate prisoners for the purpose of good order and discipline expire after fourteen days unless extended by the Chief Executive, and that decisions to segregate for more than three months are to be approved by a Visiting Justice. The Committee asks for the maximum duration that a prisoner can be segregated for the above-mentioned purposes.

18. New Zealand would like to clarify that the Corrections Act envisages two triggers for segregation:

(a) At the discretion of the prison manager for the purposes of security, good order, safety;

(b) As a decision by a hearing adjudicator or a Visiting Justice in connection to a discipline related offence.

#### *Non-voluntary segregation*

19. Segregation at the discretion of a prison manager (“non-voluntary segregation”) is not related to punishment for offences. It is designed to protect other prisoners from direct harm at the hands of the segregated prisoner, or from harm they may suffer as a result of a break down of

security, good order and discipline within the prison. Because the purpose of non-voluntary segregation is the prevention of harm to other prisoners, any limits on its duration could be counter-productive and could lead to other prisoners being harmed by the formerly segregated prisoner. At any time, only a small number of prisoners are in non-voluntary segregation.

20. There is no limit to the length of time a prisoner may be segregated for the purpose of good order and discipline; repeated extensions of the segregation direction may be made. However, the authorisation of the extension of the segregation order over time becomes increasingly remote from and independent of the prison in which the detained person is held. The prison manager makes the original 14 day segregation order. That order can be extended in monthly increments by the Chief Executive, or his or her delegates, up to a maximum of three months (the Chief Executive's delegates for this purpose include senior managers but do not include prison managers). Any further extension of up to three months can only be granted by a Visiting Justice who must thereafter review the segregation direction every three months. A Visiting Justice is independent of the Department of Corrections and may be (automatically) a District Court Judge, (or by appointment) a Justice of the Peace or a lawyer.

#### *Offence against discipline*

21. As stated above, non-voluntary segregation is not a disciplinary regime. Offences against discipline are specified in sections 128 to 131 of the Corrections Act 2004 (a copy is available at <http://www.legislation.govt.nz>) and include acts and omissions of prisoners which may disrupt good order and discipline within the prison, or while a prisoner is on temporary release.

22. Hearing adjudicators (prison staff specifically appointed by the Chief Executive for this purpose) and Visiting Justices are responsible for conducting complaints relating to offences against discipline.

23. While hearing adjudicators are primarily responsible for conducting offence hearings, a Visiting Justice can hear complaints in the first instance or have matters referred to them by a hearing adjudicator. If the offence is sufficiently serious the hearing adjudicator and Visiting Justice may both decline to hear the case and refer it to a court.

24. If the hearing adjudicator finds the offence proved, he or she may order the forfeiture of the prisoner's privileges for up to 28 days and/or forfeiture of earnings for up to 3 months and/or confinement in a cell for up to 7 days.

25. A Visiting Justice can impose heavier penalties than a hearing adjudicator, including the forfeiture of the prisoner's privileges for up to 3 months and/or forfeiture of earnings for up to 7 days and/or confinement in a cell for up to 15 days. Because penalties imposed cannot be cumulative, the maximum time a prisoner may spend in cell confinement is 15 days. While in cell confinement, prisoners remain entitled to all minimum conditions, except the right to private visitors, to make telephone calls, to use other forms of communication, and to access information or education. Prisoners charged with disciplinary offences may request legal

representation. Prisoners have a right to appeal any decision by a hearing adjudicator, including a decision to refuse legal representation, to a Visiting Justice.

#### **Non-lethal weapons (question 5)**

26. The Committee notes that the Corrections Act 2004 provides a more consistent approach to the use of non-lethal weapons and requires that any such weapons can be used if allowed by regulation. The Committee asks which non-lethal weapons are authorized under the Act. The Committee also seeks an explanation of the circumstances where these weapons are used and how the Minister of Corrections monitors their use to ensure that it does not breach articles 2 and 16 of the Convention.

27. The Corrections Regulations 2005 only authorises one type of non lethal weapon: a baton. The Regulations state that the baton must weigh no more than 1 kilogram, be made of plastic or aluminium or similar material and not be capable of delivering an electric shock (Regulation 120). Only trained staff members are permitted to carry a baton. Batons are issued at the direction of the prison manager and only in certain circumstances (Regulation s121 and 122). A staff member who has been issued with a baton may only use it with the prison manager's approval and in a way that minimises pain or injury to the prisoner (Regulation 123)

28. While the Corrections Regulations allow for the use of batons, the Department of Corrections does not currently possess any batons and, therefore, none are in use.

#### **Police Taser weapons (question 6)**

29. The report indicated that the Police were undertaking a twelve-month trial period of the Taser weapon in four districts. The Committee asks whether an assessment has been made following the trial period and, if so, what the outcome of such evaluation was. The Committee also asks for the number of persons on whom the Taser weapon was used, as well as on the circumstances justifying such use. The Committee also asks whether a study of the consequences of the Taser weapon on the health of these persons has been conducted and, if so, whether it can see information on its findings.

30. The trial period ran from 1 September 2006 to 12 August 2007. A comprehensive report on the Taser trial, entitled *Operational Evaluation of the New Zealand Taser Trial* was published in August 2008. The report is available on-line at:  
[http://www.police.govt.nz/resources/2008/operational-evaluation-of-nz-taser-trial/Operational\\_Evaluation\\_of\\_the\\_NZ\\_Taser\\_Trial\\_August\\_2008.pdf](http://www.police.govt.nz/resources/2008/operational-evaluation-of-nz-taser-trial/Operational_Evaluation_of_the_NZ_Taser_Trial_August_2008.pdf)

31. During the trial period, 128 incident reports involving the Taser were submitted and the Taser was discharged on 19 occasions. The majority of discharges were for violent offending such as intimidation, threats and family violence. On each occasion the person was assessed afterwards by a medical practitioner. No serious injuries were recorded as a consequence of the discharge of the Taser. The report concluded that on balance the deployment of the Taser at the incidents was successful.

32. Following the trial, it was announced that Tasers will be reintroduced to those districts involved in the trial. However, only trained and certified staff will be allowed to use Tasers, and such use must be in accordance with stringent operational guidelines. New technology will assist accountability. "Tasercam" is an audio and video recording capability attached to each Taser. Additional mandated reporting requirements will ensure accurate data on the operational use of the Taser is recorded.

33. The Taser will not be routinely carried by Police employees, rather, they will be required to obtain permission from either their supervisor or a Communications Centre supervisor, prior to taking a Taser to an incident.

34. Before the application of a Taser the officer involved must have an honest belief that the subject (by reason of age, size, apparent physical ability, threats made, or a combination of these) is capable of carrying out the threat posed and that the use of the Taser is warranted.

#### **Solitary confinement (question 7)**

35. The Committee seeks information on measures taken to reduce the time and improve the conditions of non-voluntary segregation (solitary confinement) which can be imposed on asylum-seekers, prisoners and other detainees, as recommended by the Committee in paragraph 6(d) of its Concluding Observations on the previous report (CAT/C/CR/32/4).

36. The Committee is referred to the New Zealand's responses to question 4 above and the Committee's conclusions and recommendations on the third periodic report (CAT/C/CR/32/4/RESP 1 paragraphs 16 - 29). No further measures have been taken to reduce the time and improve the conditions of non-voluntary segregation. New Zealand considers that non-voluntary segregation is not equivalent to solitary confinement. Non-voluntary segregation is a carefully defined and managed procedure for protecting other prisoners from direct harm and from the indirect harm which may result from a breakdown in discipline and good order within the prison.

#### **Article 3**

#### **Non-refoulement (question 8)**

37. The Committee seeks an indication of progress made towards incorporating the non-refoulement obligation of article 3 of the Convention into New Zealand's immigration legislation, as recommended by the Committee in its previous Concluding Observations (CAT/C/CR/32/4, para 5a)).

38. The Immigration Bill was introduced into New Zealand's Parliament in August 2007 and is currently awaiting its second reading to progress through the legislative process. The Bill's proposals incorporate New Zealand's non-refoulement obligations using language drawn directly from Article 3 of the Convention against Torture.

39. More information on the Immigration Bill can be found at this link:  
[http://www.parliament.nz/enNZ/PB/Legislation/Bills/4/7/d/00DBHOH\\_BILL8048\\_1-Immigration-Bill.htm](http://www.parliament.nz/enNZ/PB/Legislation/Bills/4/7/d/00DBHOH_BILL8048_1-Immigration-Bill.htm).

**The detention of asylum-seekers (question 9)**

40. The Committee asks whether New Zealand is envisaging putting an end to the practice of detaining asylum seekers in correctional facilities, as recommended by the Committee on the Elimination of Racial Discrimination (CERD/C/NZL/CO/66 of 10 August 2007, para. 24).

41. Currently, asylum seekers who are considered to pose a risk can be detained. New Zealand does not intend to end this practice. However, the vast majority of asylum seekers detained in New Zealand are housed in a low security facility administered by the Department of Labour/Immigration New Zealand. Only the small number of asylum seekers posing a security risk are likely to continue to be detained in facilities administered by the Department of Corrections and are held separately from sentenced prisoners.

42. The number of persons (including asylum seekers, failed asylum seekers and irregular migrants) who have been detained over the past six years in facilities administered by the Department of Corrections are as follows:

2002/03	2003/04	2004/05	2005/06	2006/07	2007/08
15	26	14	13	4	7

**Immigration detention (question 10)**

43. The Committee asks in relation to immigration detention:

- (a) What are the avenues to challenge the lawfulness of immigration detention;
- (b) Whether legal aid is accessible for detainees with financial difficulties;
- (c) Whether defence lawyers can participate in the hearings of the Deportation Review Tribunal;
- (d) Whether appeals filed against decisions not to grant asylum have suspensive effect on expulsion orders;
- (e) Whether New Zealand has a list of “safe third countries” for removal; and, if so, how this list is created and maintained.

44. In terms of challenging the lawfulness of immigration detention, currently, foreign nationals can only be detained for immigration purposes for a limited amount of time (48 to 72 hours) until their detention is authorised by a warrant of commitment (warrant) issued by the District Court. A warrant is only issued after the District Court considers the Department of Labour/Immigration New Zealand’s application to detain a foreign national. A new warrant must be applied for at set intervals (between 7 to 30 days) depending on the reason the foreign national has been detained. This enables the District Court to re-consider the lawfulness of the foreign national’s detention. The District Court can order the release a foreign national on conditions if their secure immigration detention is not considered appropriate. Foreign nationals can also challenge their detention during the warrant process. In addition, they may challenge



their detention through habeas corpus proceedings, judicial review and substantive appeal under the District Courts Act 1947.

45. The Immigration Bill seeks to remove the ability of a foreign national to challenge their detention through appeal under the District Courts Act 1947. The proposed new immigration legislation will have sufficient mechanisms available for challenging detention. Proposed changes to the warrant process will enable foreign nationals to apply to the District Court to challenge their detention during a warrant period where there has been a change in their circumstance that may mean they should no longer be detained.

46. On the question of whether legal aid is accessible for detainees with financial difficulties, legal aid is currently available for refugee status claimants and refugees for immigration matters relating to their claim and/or status. Residents who hold a resident's permit and a Returning Residents Visa, and who meet qualifying criteria may obtain legal aid for civil proceedings in the District Court.

47. Under the proposed Immigration Bill, legal aid will also be available for foreign nationals in warrant hearings through an amendment to the Legal Services Act 2000. This is a change from current immigration legislation, which provides that legal aid cannot be granted to those foreign nationals unlawfully in New Zealand or in New Zealand on a temporary basis unless they are refugee status claimants.

48. On the question of whether defence lawyers can participate in the hearings of the Deportation Review Tribunal (DRT), a person subject to deportation may have legal (or other) representation at hearings of the DRT. It should be noted that hearings before the DRT are not criminal proceedings. Rather, the DRT hears appeals on humanitarian grounds against the decision of the Minister to revoke a residence permit which was procured by false pretences, or to deport a residence permit holder who has been convicted of a criminal offence.

49. With regards to the question of whether appeals filed against decisions not to grant asylum have suspensive effect on expulsion orders, in general, appeals filed against decisions not to grant asylum have the effect of suspending removal or deportation. Section 129X of the Immigration Act 1987 prohibits the removal or deportation of a refugee or refugee status claimant, unless the provisions of Articles 32.1 or 33.2 of the Refugee Convention apply to that person. A person is considered to continue to be a "refugee status claimant" until any appeals against a decision not to grant asylum have been completed.

50. The Committee finally asks whether New Zealand has a list of "safe third countries" for removal; and, if so, how this list is created and maintained. New Zealand does not maintain a list of so called "safe third countries" for removal purposes. New Zealand, however, does actively monitor country information reports and return advisories released by the Office of the United Nations High Commissioner for Refugees.

#### **Assurance when risks of torture (question 11)**

51. The Committee asks whether New Zealand seeks assurances, including diplomatic assurances, before extraditing or returning an individual to another State as a way of preventing the return to a country where he/she would be in danger of torture. If so, the Committee asks

whether there is any follow-up mechanism in place to assess whether these assurances are honoured.

52. New Zealand has not yet found it necessary to seek an assurance against the danger of torture and, consequently, no mechanisms are in place to monitor such assurances.

### **Protection under article 3 (question 12)**

53. The report indicates that fewer than twenty people are known to have claimed protection in New Zealand under article 3, of which one claim has been successful. The Committee asks on which grounds the above-mentioned claims were rejected and how the information provided by the claimants was assessed.

54. New Zealand would like to clarify that only seven claims for protection have been made under Article 3. The failed claims were rejected on the basis that they lacked credibility. The claims were initially considered by the Refugee Status Branch and were then considered by the Refugee Status Appeal Authority. In each case, no new or additional information was provided.

### **Mr Zaoui's case (question 13)**

55. The Committee asks for updated information on Mr. Zaoui's case, including an indication of any steps taken to review the legislation relating to the security-risk certificate in order to ensure that appeals can effectively be made against decisions to detain, remove or deport a person, extend the time given to the Minister of Immigration to adopt a decision and ensure full respect of Article 3 of the Convention, as recommended by the Committee in its previous Concluding Observations (CAT/C/CR/32/4, para 6 c).

56. The security risk certificate issued in respect of Mr Zaoui was withdrawn by the New Zealand Security Intelligence Service in September 2007. As a recognised refugee in New Zealand, Mr Zaoui was entitled to and subsequently granted residence in New Zealand. The provisions of Part 4A of the Immigration Act 1987 which were used to issue the security risk certificate against Mr Zaoui, were examined as part of a review of the Immigration legislation.

57. The Immigration Bill seeks to amend Part 4A of the Immigration Act. Among the proposed changes is an amendment to the provisions for the use of classified information and appeals where classified information is relied on in the decision making process. The proposed amendment allows for classified information to be used in decision making, with special safeguards that ensure natural justice for the foreign national.

58. The key safeguards for foreign nationals are:

(a) Only Chief Executives from specified security, defence, law enforcement, border, foreign affairs and internal government agencies can certify information as classified information;

(b) The Minister of Immigration must agree to the use of classified information in decision making and can only do so where it relates to security or criminal conduct;

- (c) Only the Minister of Immigration can make an immigration decision relying on classified information and only senior and security cleared refugee and protection officers can make a refugee and protection decision;
- (d) Where potentially prejudicial information is given to the affected foreign national, they must be given a summary of the allegations in the classified information to enable them to respond prior to a decision being made;
- (e) Where a negative or decline decision is made, the foreign national must be informed that the decision had been made on the basis of classified information and the reasons for the decision;
- (f) The foreign national must be advised of any appeal rights that are available;
- (g) In any appeal or review proceedings, a foreign national can access a special advocate to represent them during any appeal;
- (h) The foreign national's special advocate may access the classified information used in decision making;
- (i) Where the foreign national appeals to the Immigration and Protection Tribunal, the appeal may be heard by up to three specially warranted and security briefed District Court Judges (DCJs);
- (j) During any appeal the DCJs can assess both the immigration and/or refugee and protection decision made, along with the use and veracity of the classified information used in the decision making process;
- (k) The new legislation provides for a clearly and closely prescribed system for judicial review and appeal on points of law to the courts, where security briefed judges may access any classified information used in the decision making process and the foreign national can be represented by their special advocate;
- (l) The Bill clarifies that classified information provisions do not rule out the application of the Ombudsmen Act 1975, the Official Information Act 1982, or the Privacy Act 1993.

**Asylum requests (question 14)**

59. The Committee asks for data, disaggregated by age, sex and nationality, covering the reporting period on:

- (a) The number of asylum requests registered and the number of requests granted
- (b) The number of forcible deportations or expulsions
- (c) The number of rejected asylum-seekers and/or irregular/undocumented migrants who are held in administrative detention in immigration detention facilities and alternative detention arrangements and

(d) The countries to which these persons were expelled.

60. The number of asylum requests granted in the first instance during the period 1 January 2003 to 31 January 2009 is set out in the attached spreadsheet "Claims approved by age, nationality and gender".

61. With respect to appeals approved by the Refugee Status Appeal Authority, during the period 1 July 2002 to 30 June 2008 the Authority issued a total of 2471 decisions, of which 485 appeals were granted. The attached spreadsheets 'RSAA Appeals Received' and 'RSAA Appeals Approved' break down the appeals made and granted by sex and nationality. While New Zealand does not gather appeal information by age, the spreadsheet does indicate the number of appeals made by minors.

62. The numbers of forcible deportations or expulsions are set out in the following table.

#### Number of forcible deportations or expulsions

	Removals of overstayers	Removals of failed asylum claimants*	Removals of RSE Workers**	Deports	Total of forcible expulsions
2009 (to 31 Jan)	33	3	6	1	43
2008	785	124	84	28	1021
2007	633	129	12	23	797
2006	962	264	n/a	16	1242
2005	964	218	n/a	14	1196
2004	1034	286	n/a	17	1337
2003	639	290	n/a	5	934

\* Approximate

\*\*The Department of Labour-Immigration commenced collecting statistics on Recognised Seasonal Employer (RSE) workers only at the beginning of the 2007/2008 financial year.

63. The following table sets out the number of rejected asylum-seekers who are held in administrative detention in immigration detention facilities and alternative detention arrangements. This table does not include information on irregular/undocumented migrants, as this is not captured by and cannot be readily obtained from the information that is currently collected.

Year	Estimated number of rejected asylum claimants who were held in administrative and alternative detention facilities
2009 (to 31 January)	0
2008	6
2007	6
2006	12
2005	22
2004	18

64. The following table sets out the countries rejected asylum seekers were expelled to:

	Number of rejected asylum claimants who were expelled						
	2003	2004	2005	2006	2007	2008	2009 (to Jan 31)
Afghanistan	5	0	0	0	0	1	0
Albania	0	0	0	2	1	0	0
Algeria	2	0	1	2	1	1	0
Argentina	1	0	0	0	0	0	0
Austria	0	0	0	0	0	1	0
Azerbaijan	0	0	1	0	0	0	0
Bahrain	0	0	1	0	0	0	0
Bangladesh	1	8	5	11	5	6	0
Belgium	0	1	0	0	0	0	0
Brazil	0	2	1	1	0	0	0
Bulgaria	0	1	0	1	0	1	0
Burundi	0	1	0	0	0	0	0
Cambodia	1	2	0	1	1	0	0
Canada	0	0	0	1	0	0	0
Chad	0	0	0	0	0	3	0
Chile	0	0	2	4	7	0	0
China	26	35	40	36	32	34	2
Colombia	0	1	0	0	0	0	0
Congo	0	2	0	0	0	0	0
Czech Republic	11	5	16	10	1	0	0
Democratic Republic of Congo	0	0	2	0	0	0	0
Ecuador	0	0	0	3	0	0	0
Egypt	0	1	0	0	0	0	0
Ethiopia	0	0	0	3	0	0	0
Fiji	15	13	7	4	3	2	0
France	0	1	0	0	0	0	0
Ghana	2	0	2	0	0	0	0
Georgia	0	0	0	2	0	0	0
Germany	0	0	0	0	0	1	0
Great Britain	0	1	0	1	0	0	0
Hong Kong	0	1	0	1	0	0	0
Hungary	5	3	5	1	4	10	0

India	41	41	30	30	19	12	0
Indonesia	8	6	9	12	2	1	0
Iran	10	19	7	10	6	12	0
Iraq	2	2	2	0	1	1	0
Israel	0	3	2	2	0	0	0
Italy	0	2	0	0	0	0	0
Japan	0	0	0	1	0	0	0
Jordan	0	0	1	1	0	1	0
Kenya	0	1	0	0	0	0	0
Kiribati	0	0	0	1	0	0	0
Kuwait	2	0	0	0	0	0	0
Lebanon	1	1	0	0	0	0	0
Liberia	0	1	1	1	0	0	0
Lithuania	1	0	0	0	0	0	0
Malaysia	7	10	10	10	2	3	0
Moldova	0	0	0	1	0	0	0
Mongolia	0	1	0	0	0	0	0
Morocco	2	1	0	0	0	1	0
Nauru	1	0	0	0	0	0	0
Nepal	1	2	0	7	0	0	0
Netherlands	1	1	0	0	0	0	0
Nigeria	4	5	2	2	1	1	0
Pakistan	6	4	6	4	2	3	0
Palestine	0	1	0	0	0	0	0
Papua New Guinea	0	0	1	1	0	0	0
Peru	0	0	0	2	0	1	0
Philippines	0	0	0	2	0	0	0
Poland	0	5	1	1	0	5	0
Romania	1	0	0	7	3	0	0
Russia	0	0	0	5	1	0	0
Serbia & Montenegro	0	0	0	0	1	0	0
Sierra Leone	0	2	1	0	1	0	0
Slovakia	0	0	1	0	1	2	0
Somalia	0	0	0	1	0	1	0
South Africa	6	2	7	2	3	1	0
South Korea	1	0	1	3	0	1	0
Sri Lanka	9	12	3	3	2	0	1
Sudan	0	0	0	0	3	0	0
Sweden	0	0	0	0	1	1	0
Switzerland	0	0	0	1	0	0	0
Syria	0	0	0	1	0	1	0
Tanzania	0	1	0	0	1	0	0
Thailand	114	67	31	49	17	11	0
Tonga	1	1	0	0	1	0	0
Turkey	0	1	1	1	0	0	0
Tuvalu	2	6	0	3	0	0	0

Uganda	0	0	0	0	1	0	0
Ukraine	0	3	1	0	1	1	0
USA	0	0	2	0	1	0	0
Vietnam	2	4	8	12	8	7	0
Western Samoa	0	1	0	0	0	0	0
Yugoslavia	1	0	0	1	0	0	0
Zimbabwe	2	0	0	1	0	0	0
<b>Totals</b>	<b>295</b>	<b>284</b>	<b>211</b>	<b>262</b>	<b>134</b>	<b>127</b>	<b>3</b>

#### Article 4

##### **Prosecutions of torture in the absence of the Attorney General's consent (question 15)**

65. The report indicates that the Crimes of Torture Act 1989 provides that no proceedings for the trial and punishment of a person charged with torture under the Act shall be instituted without the consent of the Attorney General. The Committee asks whether there are mechanisms in place to ensure that where there is a reasonable ground to believe that an act of torture has been committed, the alleged perpetrator would be tried including in the absence of the Attorney General's consent.

66. An alleged perpetrator would not be tried in New Zealand in the absence of the consent of the Attorney General. The requirement of the consent of the Attorney General under the Crimes of Torture Act 1989 is a standard procedural safeguard in New Zealand criminal law for specified extraordinary offences that also applies, for example, to offences committed outside New Zealand and to offences that involve human rights considerations. Examples of other human rights related offences that require the Attorney General's consent include the prohibitions on migrant smuggling and human trafficking contained in sections 98C and 98D of the Crimes Act 1961.

#### Article 5

##### **Application of the Convention to overseas personnel (question 16)**

67. The Committee asks for clarification of whether the Government considers that the Convention applies to persons under its jurisdiction in cases where New Zealand troops or police officers are stationed abroad.

68. New Zealand law provides for the obligations contained in the Convention to apply to New Zealand troops, police officers or other personnel who are stationed abroad. The Crimes of Torture Act applies, by virtue of section 74(1) of the Armed Forces Discipline Act 1971 and section 87(2) of the Policing Act 2008, to all New Zealand troops and police in service outside New Zealand and to civilians and non-New Zealand citizens in the force who accompany the force in their operations overseas. The prohibition against torture and cruel, inhuman or degrading treatment is also affirmed by section 9 of the New Zealand Bill of Rights Act 1990, which applies to any act of any New Zealand official or other person discharging New Zealand public functions under law."

## **Articles 6-9**

### **Request for extradition (question 17)**

69. The Committee asks for information on cases, if any, where New Zealand rejected a request for extradition by another State for an individual suspected of having committed a crime of torture, and thus has engaged its own prosecution as a result.

70. New Zealand would like to advise that there have not been any requests of this kind.

## **Article 10**

### **Training for those dealing with asylum-seekers (question 18)**

71. The Committee asks for elaboration on what kind of training is provided to officials dealing with the expulsion, return or extradition of asylum seekers.

72. The Department of Labour/Immigration New Zealand has a dedicated team of immigration Compliance Officers who deal with the return of failed asylum claimants. Failed asylum claimants can only be returned by these Compliance Officers, who must pass a designation training course overseen by the Legal division of the Department of Labour before they are allowed to make removal orders. Training topics include the following: legislation and policy, decision making and return processes, all international obligations; humanitarian issues, fairness and natural justice, and accountability.

73. Once a Compliance Officer has received the necessary delegations, they are teamed up with an experienced staff member for further training and mentoring before being allowed to make decisions on the return of failed asylum claimants. Further training is also provided to all staff through regular interaction and briefings by Departmental Solicitors and Refugee Status Officers. Staff also attend forums and meetings where refugee and victim advocacy groups are represented (such as the Auckland Refugee Council and the United Nations Refugee Agency).

## **Article 11**

### **Investigation into deaths in custody (question 19)**

74. The Committee asks for information on the findings of the investigations conducted by the Public Prisons Service and the Department's Inspectorate initiated in 2006 regarding deaths in custody. The Committee asks whether the Office of the Ombudsman has also conducted an independent investigation into the procedures around the escorting of prisoners in custody. If it has, the Committee asks for information on the findings of such investigation.

75. As indicated in paragraphs 164 to 169 of the CAT Report, on 25 August 2006 a 17-year-old remand prisoner, Liam Ashley, died as a result of injuries sustained while being transported in a van with other prisoners. A 25-year-old prisoner was subsequently convicted of the murder of Liam Ashley and sentenced to life imprisonment, with a minimum non-parole period of 18 years.

76. Following Liam Ashley's death, four separate reviews were conducted by the Inspectorate of the Department of Corrections, the Ombudsmen, the Police and the Coroner.



77. The Inspectorate of the Department of Corrections completed a comprehensive report on 7 December 2006. The Inspectorate's key finding was that Liam Ashley's death could have been avoided if he had been kept separate from adult prisoners during transportation as is required, "where practicable", by Regulation 179 (1) (b) of the Corrections Regulations 2005.

78. The Inspectorate found that Liam Ashley was fatally injured by an adult prisoner after being placed with two adult prisoners in a three berth compartment of a prisoner transportation vehicle operated under contract to the Department of Corrections by a private security firm. The Inspectorate found that a number of factors contributed to this tragedy including

(a) The Prison Service's failure to advise the escort officers operating the prison transport vehicle that Liam Ashley had been classified as a vulnerable "At Risk" prisoner and that the adult prisoner who attacked him was also an "At Risk" prisoner;

(b) The escort officers' decisions not to separate Liam Ashley from the adult prisoners on the basis of their observation of interaction between him and the adult prisoner while in holding cells at the court, the number and classes of prisoners being transported, the number of stops the prisoner transport vehicle had to make picking up and dropping off prisoners and the risk involved in moving prisoners around the vehicle at each stop;

(c) The escort officer's failure to observe Liam Ashley and the adult prisoners during part of the journey.

79. The Ombudsmen's investigation was directed at general transport conditions and matters of broad and systemic impact affecting the day to day movements of prisoners. The Ombudsmen found that it is undesirable for the Department of Corrections to treat young prisoners as adults from the age of 18 years, whereas the Police treat them as adults from the age of 17 years. They recommended that the Department pursue consultations with the Police (and any other appropriate agencies) with a view to making consistent the age at which the Department and Police treat young prisoners as adult prisoners. The Ombudsmen considered the lack of a specific duty of court custodial staff to note statements by judges and lawyers at court relating to the risk status of prisoners unsatisfactory.

80. They recommended that the Department require its courtroom custodial staff to record these risk statements where relevant to transport or other custodial risks, and to liaise with escort staff who should seek additional transport instructions as appropriate.

81. The Ombudsmen noted that the optimum design of vehicles for prisoner transport is not a straightforward matter and that no single form of vehicle is likely to be cost effective for all prisoners, for all journeys, at all times. They recommended that the Department fully review prisoner transport needs, and re-design its fleet of vehicles in order that suitable vehicles may be available in the future to meet the problems identified.

82. The Coroner's report awaited the outcomes of the other reviews mentioned above and/or any criminal proceedings. On 7 December 2006, the Coroner's report determined the cause of death but made no other formal recommendation.

83. Given that four separate investigations were being conducted, the Public Prison Service did not conduct a separate investigation but have concentrated on implementing the 37

recommendations in the Ombudsmen's report and the 13 recommendations in the Inspectorate's report. For instance, the Minister of Corrections has issued a directive requiring that all prisoners under the age of 18 who are transported in prisoner transport vehicles be separated from adult prisoners. Prisoners in prisoner transport vehicles are now required to wear waist restraints to which their hands are attached. Waist restraints ensure that prisoners are physically unable to harm themselves or others during transportation. Other action taken since the release of the report includes:

- (a) Discontinuing the use of unsuitable rear compartments in transport vehicles;
- (b) Taking steps to ensure that prisoners have sufficient water during journeys;
- (c) Implementing national standards for the supply of food and water;
- (d) Giving prisoners the opportunity to leave vehicles for fresh air and movement at intervals of not longer than 4 hours, other than in exceptional circumstances.

84. All the actions described have been implemented. While the Ombudsmen recommended intervals of 3 hours for prisoners to leave vehicles for fresh air and movement, the Department of Corrections has found 4 hours is more achievable (given the locations of prisons and police stations where such rest breaks could be taken). That said, in many cases, the locations of rest stops will occur within the three hour limit proposed by the Ombudsmen.

85. The Police are also responsible for the transportation of persons who are in their custody. After analysing the Ombudsmen's recommendations, the Police also introduced a number of new procedures. For instance, the Ombudsmen recommended that the Department of Corrections utilise police stations for food, water and rest breaks during long prisoner transports. Following consultation with the Department of Corrections, a three month trial took place in 2008 whereby three police stations provided rest breaks for 8 to 10 of the Department of Corrections prisoners at a time during their travel between Hawke's Bay-Auckland and Christchurch-Otago prisons. Police are aiming to expand the operation of providing rest breaks for Department of Corrections prisoners for selected police stations on transfer routes. More police stations can be added as demand dictates.

#### **Independent prison complaint mechanism (question 20)**

86. The Committee asks whether the new independent prison complaint mechanism referred to in the report has been established and, if not, the reasons for the delay.

87. New Zealand is committed to having a well-functioning and independent prison complaints and monitoring process because it increases the ability for systemic issues to be identified and proactively resolved.

88. The Ombudsmen are Officers of Parliament, with the highest level of independence within New Zealand's system of government. The Ombudsmen play an important role in providing an independent avenue for prison complaints and examining systematic issues. In relation to deaths in custody, the Ombudsmen currently monitor investigations carried out by an Inspector of Corrections, providing comments to the Department of Corrections where relevant.

89. On 19 September 2007, the then Government agreed that the role of the Office of the Ombudsmen in relation to prison complaints would be enhanced and, as a result, an Ombudsman would assume primary responsibility for the oversight and investigation of prison complaints and incidents. This Ombudsman would continue to have appropriate responsibilities in the general jurisdiction of the Ombudsmen.

90. Under the proposal, the Ombudsmen would be given new responsibilities for:

(a) Conducting investigations of all deaths in custody and designated serious incidents;

(b) Undertaking more reviews of systemic issues identified during prison visits as a result of incidents or complaints.

91. The proposal should result in more public reporting of investigations (for example into systemic issues that may give rise to serious incidents) and regarding prison conditions and prisoner treatment more generally.

92. A staged implementation of the Ombudsmen's enhanced role is underway, in consultation with the Department of Corrections. A protocol between the Chief Ombudsmen and the Chief Executive of the Department has been revised to reflect the new operational arrangements.

#### **Places of deprivation of liberty (question 21)**

93. The Committee asks for information on the number of persons and the occupancy rate of the places of deprivation of liberty in the criminal justice system.

94. New Zealand refers the Committee to the attached spreadsheet "Occupancy Rates of Prisons", which sets out the number of persons and occupancy rate of the places of deprivation of liberty in the criminal justice system as of the week ending 1 February 2009

#### **Measures to protect vulnerable persons (question 22)**

95. The Committee seeks information on measures taken to protect and guarantee the rights of vulnerable persons deprived of their liberty, (notably women, indigenous peoples, persons suffering from mental illnesses and children).

96. With respect to vulnerable persons detained within the penal system, the Department of Corrections proactively seeks to protect such prisoners by:

(a) The early identification of issues that make prisoners more vulnerable;

(b) The appropriate separation of vulnerable prisoners from other prisoners;

(c) The arrangement of treatment, support and programmes designed to reduce the vulnerability of prisoners.

97. Vulnerable prisoners are identified during their initial assessment when they first enter the prison system. Prisoners are assessed for their potential to harm themselves, for their potential to harm others, for indications of mental illness, for drug and alcohol addiction and for serious

health issues. Prisoners who have been convicted of offences that increase their risk of being victimised by other prisoners are also identified. Significant identifiable vulnerable groups are accommodated separately.

98. Women are accommodated in separate prisons which have been purpose built or modified for women prisoners. Female prisoners with children under the age of 9 months may be accommodated with their child in a mother and baby unit until the child reaches the age of 9 months. On 25 September 2008, the Corrections (Mothers and Babies) Amendment Act 2008 was passed which will implement longer periods (up to 24 months) for mothers to stay with their babies.

99. There are also separate units for the small number of young male offenders (1.25% of all prisoners) under the age of 18 who have been sentenced to imprisonment for serious crimes and for a limited number of other prisoners under the age of 20 who have been identified as vulnerable. The *Test of Best Interest* and the *Prison Youth Vulnerability Scale* are used to assess the vulnerability of 18 and 19 year old prisoners.

100. Individual prisoners may request protective segregation which may be granted if the prison manager is satisfied that the safety of the prisoner is at risk from another person and there is no other reasonable way of ensuring his or her safety. Prisoners segregated for the purposes of protective custody do not, in general, experience a lower standard of prison conditions compared to other prisoners, or lose any of their minimum entitlements, and in most instances will have opportunities to associate with other segregated prisoners. Approximately 25% of all prisoners are in protective segregation, nearly all of them at their own request. The Department of Corrections has also established a protocol with the Ministry of Health, which for prisoners assessed as mentally ill has reduced the previously excessive waiting times for beds in forensic psychiatric hospitals in the public health system. In addition a new more effective mental health screening tool has been developed. Funding for its introduction is now being sought.

101. With respect to indigenous peoples and prisons, New Zealand acknowledges that the Māori population are over-represented in the prison population. To address this, the Department of Corrections has developed a separate Māori Strategic Plan a primary focus of which is to reduce Maori offending. Māori prisoners are able to access all initiatives provided by the Department including rehabilitation programmes, sex offending programmes, domestic violence programmes and alcohol and drug treatment programmes. In addition the Department provides a number of initiatives aimed at reducing offending by strengthening awareness of Māori cultural concepts and values among Māori prisoners, including an assessment to match their cultural needs to appropriate Māori interventions and rehabilitative treatment, and a number of programmes which are integrated within a Māori cultural framework. These programmes include a cognitive behavioural therapy programme for sex offenders, Māori Focus Units that use Māori culture to motivate and rehabilitate prisoners based on a therapeutic community model, and the Kaiwhakamana Visitor Policy under which Māori elders are given greater access to Māori prisoners to support them in establishing and maintaining relationships with their whanau (family) and iwi (tribe).

102. In terms of the Police, the health status and suicide risk of all prisoners is continually assessed and monitored. Where a person in custody could be particularly at risk, for example because of the nature of the charge against them, their sexual preference, or any other reason, a

full assessment of that person's needs is made, in accordance with the Person in Custody Health and Safety Management Plan. Actions taken under the Plan might include bailing the person if appropriate, summoning a health professional for expert health assessment, or invoking the provisions of the Mental Health (Compulsory Assessment and Treatment) Act 1992.

103. The sole caregiver of a child or young person will only be detained by the Police where the charge and the circumstances leave no alternative. In such a case, care arrangements for the child or children will be made.

104. New Zealand is cognisant of its obligations under the United Nations Conventions on the Rights of the Child. A child or young person is detained in New Zealand in accordance with the provisions of the Children, Young Persons and their Families Act 1989. The principle that the welfare and the interests of the child or young person is the paramount consideration is enshrined in that legislation. The Act establishes a regime, *inter alia*, for the management of children and young persons in custody.

105. In terms of immigration, the Immigration Act 1987 provides specific provisions for the special treatment of children if they are to be detained for immigration purposes. However, it is not the practice of the Department of Labour to detain children.

106. Regarding people who are detained for mental health reasons, the Committee is referred to the Mental Health (Compulsory Assessment and Treatment) Act 1992, which contains several protections for patients who are detained under a compulsory treatment order. These protections are additional to those that are available to all health and disability consumers (such as the disabled), such as the right to make a complaint to the Health and Disability Commissioner under the Code of Health and Disability Consumers' Rights, and access to free advocacy services. The Act provides, amongst other protections:

- (a) The right to obtain second opinions from specialists;
- (b) The right of appeal against compulsory orders to a specialised review tribunal;
- (c) Access to the services of District Inspectors (at no cost) who are lawyers charged with protecting the rights of patients;
- (d) Obligations imposed on statutory officials to report on patients' care and mental health services generally;
- (e) The authority for officials to order inquiries in certain circumstances.

### **Article 12 and 13**

#### **Independent mechanism to investigate acts of torture (question 23)**

107. The report indicates that if it were alleged that an act of torture has been committed the Police would undertake the investigation. The Committee asks whether the State party is envisaging the establishment of independent mechanisms to conduct investigations in such cases. The Committee also asks whether investigations on grounds of torture have been conducted during the reporting period and, if so, the Committee asks for information on their findings.

108. The Police have principal responsibility for the investigation of all criminal offences, including alleged acts of torture, but are subject to oversight by and a right of complaint to the Independent Police Conduct Authority (see further below). A complaint against Police would be conducted by that Authority. In relation to prisons, New Zealand legislation also provides for oversight by both the Office of the Ombudsmen and by Visiting Justices, who have a specific and independent statutory mandate to investigate abuses or alleged abuses.

109. There have been no charges laid in New Zealand under the Crimes of Torture Act 1989 during the reporting period. The New Zealand Police does not hold any statistics on investigations or prosecutions of acts of torture.

#### **Independent investigation of torture (question 24)**

110. The report indicates that if it were alleged that a member of the New Zealand Armed Forces has committed an offence under the Crimes of Torture Act, the commanding officer of that person would be required to record a charge or refer the allegation to the appropriate civil authority for investigation, unless the commanding officer considered that the allegation was not well founded. The Committee asks what mechanisms are in place to ensure that in cases of allegation of torture an independent investigation takes place even if the commanding officer considers that the allegation is not well-founded.

111. Any person who wishes to pursue an allegation of torture against a member of the Armed Forces may lay a complaint with the Police. Section 3 of the Crimes of Torture Act 1989 establishes extra-territorial jurisdiction in respect of crimes of torture, so such a complaint could proceed to trial by way of indictment in the High Court, whether the alleged offence took place in New Zealand or overseas. The decision as to whether or not such proceedings could be instituted would be a matter for the Attorney General.

#### **Police Complaints Authority (question 25)**

112. The Committee asks for further information on the Police Complaints Authority, in particular its ability to conduct independent investigations in cases of allegations of torture by members of the police.

113. Since New Zealand submitted its fifth periodic report, there have been some changes to body that monitors the conduct of the Police. The Independent Police Conduct Authority (the Authority) is a civilian oversight body which evolved from the Police Complaints Authority (which was established in 1988). The Independent Police Conduct Authority Act 2007 marked a major shift in the direction of the Authority from an individual to a Board of up to five members comprising both legal and lay experts.

114. Members of the Authority are appointed by the Governor General on the recommendation of the House of Representatives. Justice Lowell Goddard is the current Chairperson of the Authority, having been appointed as the Police Complaints Authority in February 2007.

115. The Authority exists to ensure and maintain public confidence in the Police. It does this by considering and, if it deems it necessary, investigating public complaints against police of

alleged misconduct or neglect of duty and assessing police compliance with relevant procedures and practices in these instances.

116. The Authority also receives from the Commissioner of Police, notification of all incidents involving police where deaths or serious bodily harm has occurred. The Authority has discretion to investigate these incidents if it wishes and, if it chooses to do so, may require any person to furnish information relevant to the investigation.

117. Should it receive a complaint alleging torture, cruel, inhuman or degrading treatment, the Authority would have jurisdiction to investigate the matter.

118. In 2006, pursuant to New Zealand's obligations under the Optional Protocol to the Convention Against Torture, the Authority was designated as the national preventive mechanism in relation to people held in police cells and otherwise in the custody of the police. The Authority visited 25 police sites equipped with detention facilities throughout New Zealand for the year ended 30 June 2008. The number of individual cells inspected during these visits was well in excess of 50.

#### **Police Complaints Authority (question 26)**

119. Under Section 17 of the Police Complaints Authority Act, the Police Complaints Authority may choose to decide to take no action on the complaint in circumstances where the complainant has had knowledge of the matters for more than 12 months before the complaint was made. The Committee asks whether this provision also applies to the crime of torture. The Committee asks for the number of complaints registered, if any, by the Police Complaints Authority on grounds of torture, or cruel, inhuman or degrading treatment during the reporting period and the number of investigations undertaken, as well as on their outcome.

120. Like all complaints it receives, the Independent Police Conduct Authority may technically decide not to action a complaint of torture when the complainant has had knowledge for more than 12 months before the complaint was made. However, given the seriousness of the accusation, it is likely that the Authority would investigate historic complaints of torture.

121. The Authority's current classification systems does not currently record the number of complaints received on the ground of torture, or cruel, inhuman or degrading treatment. As part of its functions under the Optional Protocol, the Authority is developing systems to enable complaints that fall within the Protocol to be identified and it is expected that this system will be in place this year.

#### **Public interest and a decision to prosecute (question 27)**

122. According to the report, if a complaint were filed under the Crimes of Torture Act, the police must determine whether there is admissible, reliable and strong evidence to establish a prima facie case. In addition, if the police consider it is in the public interest to prosecute, and the alleged perpetrator can be located, he or she can be arrested subject to the Attorney General's consent. The Committee asks in which cases the police could consider it contrary to the public interest to prosecute if there are serious reasons to believe that an act of torture has been committed.

123. All criminal prosecutions in New Zealand are subject to consideration of the "public interest", as defined in the published prosecution guidelines:

<http://www.crownlaw.govt.nz/uploads/ProsecutionGuidelines.PDF>, [3.3]. As used there, the term "public interest" encompasses a broad range of factors, including but not limited to:

- (a) Whether the prosecution is more likely than not to result in a conviction;
- (b) The seriousness of the offence in question;
- (c) Other factors such as the effect of prosecution on victims or others.

124. The definition given by the guidelines also excludes impermissible factors, such as discriminatory purposes or political advantage. Given the gravity of torture as an offence and the obligations under the Convention, it is highly improbable that, other than where there is an insufficient prospect of prosecution (paragraph 123.1 above), prosecuting authorities would not proceed with a charge of torture.

#### **Overseas personnel (questions 28)**

125. The Committee asks for updated information on any specific cases of torture or cruel, inhuman or degrading treatment or punishment, or similar offences committed by armed forces and other personnel, including contractors, stationed abroad, notably in Afghanistan.

126. The New Zealand Defence Force is not aware of any allegations of such conduct being committed by members of the Armed Forces serving overseas, including civilians accompanying such forces.

#### **Article 14**

##### **Reservation (question 29)**

127. The Committee asks for updated information on the final decision of the Government regarding New Zealand's withdrawal of its reservation to article 14.

128. The work on New Zealand's compliance with Article 14 is still ongoing. The Ministry of Justice and the Ministry of Foreign Affairs and Trade are continuing to examine the implications of a withdrawal to ensure that were New Zealand to remove the reservation, it would adhere in all respects with Article 14 or whether specific legislative amendments would be required.

#### **Article 16**

##### **Taskforce for Action on Violence (question 30)**

129. The Committee asks whether following the release of the first report of the Taskforce for Action on Violence within Families established by the Government in 2005, there have been concrete steps to prevent violence against women and children in the family.

130. In January 2008, the Taskforce publicly released its Ongoing Programme of Action, which builds on the work of the First Report, using guiding principles and acting on four fronts



identified; leadership, changing attitudes and behaviour, ensuring safety and accountability, and effective support services. The Programme of Action presents the Taskforce's key achievements, and outlines its plans and programmes for 2008 and beyond.

131. Concrete steps achieved up to the reporting period to June 2008 include:

(a) A new initiative to better support children and other victims affected by family violence. The initiative, the Family Violence Inter-agency Response System, involves social workers, police and Women's Refuge working together to provide the best support in a co-ordinated and informed manner;

(b) The establishment of four additional Family Violence Courts (three in Wellington and one in Auckland) to speed up processing of domestic violence cases, which in turn will reduce the stress on families and children who are victims of family violence. The establishment of these courts has occurred in parallel with improved training for lawyers and other justice professionals on family violence, and more funding for Independent Victim Advocates in all Family Violence Courts. There has also been an increase to the legal aid eligibility threshold for orders under the Domestic Violence Act 1995 to improve legal aid accessibility;

(c) The '*It's not OK*' social marketing campaign (the Campaign) which is changing attitudes and behaviours on family violence. The first phase of the Campaign focussed on social norms, raising awareness of family violence. The second phase was focussed on helping stop intimate partner violence, connecting to the link with child maltreatment. The third phase includes the Campaign Community Action Fund, which provides funding for community-based family violence initiatives, part of which is focussed specifically on initiatives for children affected by family violence. The Campaign is helping New Zealanders to report and speak out against family violence. Surveys conducted since the start of the Campaign show that it is having an impact. In a recent survey, 95% of the total sample recalled something from the Campaign, with over one in five (22%) of those who had seen the TV advertisements reporting taking some action as a result;

(d) A review of the Domestic Violence Act 1995 to strengthen police powers and responses to family violence incidents. This led to the introduction of the Domestic Violence (Enhancing Safety) Bill, which proposes a number of substantive and procedural changes to the protection order regime. In particular, senior Police employees will now be able to make 'on-the-spot protection orders' and sentencing courts will be able to consider whether or not a protection order should also be made on the behalf of the victim. The review also requires that the safety of children in a domestic relationship with the alleged victim and/or offender is more explicitly considered when setting the conditions of Police bail;

(e) The establishment of new Police Area and District Family Violence Co-ordinators and a Police Prosecutions Service Family Violence Policy. There has also been, and continues to be, specialised training for all frontline police on family violence investigation and risk assessment;

(f) A new process to review all family violence-related deaths, including the establishment of the Family Violence Death Review Committee;

(g) Specialised information kits for perpetrators or suspected perpetrators linking them into relevant support agencies and stopping violence programmes;

(h) Improved research into family violence and prevention including the establishment of the “Family Violence Clearinghouse” (<http://www.nzfvc.org.nz>), which is an information sharing network on best practice.

132. Ongoing priorities for 2009 include developing a work programme for child maltreatment prevention, establishing a further two Family Violence Courts, establishing a national protocol on how the family violence courts are run, and improved training of prosecutors.

#### **Human trafficking and commercial sexual exploitation (question 31)**

133. The Committee requests information, disaggregated by sex, age, ethnicity or origin of victims, on the number of investigations, convictions and sanctions that have been applied in cases of human trafficking and commercial sexual exploitation. The Committee also requests the number of Witness Protection Visas issued to victims of trafficking and how many victims of trafficking have benefited from recovery assistance.

134. New Zealand does not collect statistics on human trafficking and commercial sexual exploitation. There has been no substantiated evidence to suggest New Zealand is a human trafficking destination and as such there have been no human trafficking prosecutions under relevant legislation.

#### **Export/import of equipment (question 32)**

135. The Committee asks whether there is legislation in New Zealand aimed at preventing or prohibiting the production, trade, export and use of equipment specifically designed to inflict torture or cruel, inhuman or degrading treatment. If so, the Committee asks for information about its content or implementation. If not, the Committee asks whether the adoption of such legislation is being considered.

136. New Zealand has no statutory interventions preventing or prohibiting the import or export of equipment specifically designed to inflict torture or cruel, inhuman or degrading treatment. No legislation of this type is on the Government’s work programme.

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