



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

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COMMITTEE AGAINST TORTURE
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3-21 May 2004

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

Conclusions and recommendations of the Committee against Torture

NEW ZEALAND

1. The Committee considered the third periodic report of New Zealand (CAT/C/49/Add.3) at its 604th, 607th and 616th meetings, held on 11, 12 and 19 May 2004 (CAT/C/SR.604, 607 and 616), and adopted the following conclusions and recommendations.

A. Introduction

2. The Committee welcomes the third periodic report of New Zealand, which was prepared in accordance with the Committee's guidelines. It notes, however, that the report was submitted with a three-year delay.

3. The Committee welcomes with appreciation the additional written and oral information provided, as well as the attendance of a high-level delegation, which demonstrates the State party's willingness to maintain an open and fruitful dialogue with the Committee.

B. Positive aspects

4. The Committee notes with appreciation:

(a) The adoption of the 1999 Extradition Act, responding to the Committee's previous recommendations;

(b) The cooperation undertaken with the Office of the United Nations High Commissioner for Refugees and the willingness to comply with its guidelines and recommendations;

(c) That the Mangere Accommodation Centre can be considered to be more of an open centre than a detention centre;

(d) The Police Detention Legal Assistance Scheme, which provides for initial free legal advice to be obtained by persons in police custody;

(e) Legislative and administrative developments that enhance compliance with the Convention, in particular the 2000 Protocol between the Department of Corrections and the Ombudsman's Office, the 1998 amendment to the Mutual Assistance in Criminal Matters Act, and the 2000 International Crimes and International Criminal Court Act;

(f) Measures taken to improve the effectiveness and strengthen the independence of the Police Complaints Authority;

(g) The efforts undertaken to promote a positive relationship between the police and Maori;

(h) The efforts undertaken to establish new Child, Youth and Family Residential Facilities;

(i) The ongoing elaboration of a national plan of action on human rights by the Human Rights Commission;

(j) The declared intent to withdraw reservations to the Convention against Torture and the Convention on the Rights of the Child, and to ratify the Optional Protocol to the former Convention.

C. Subjects of concern

5. The Committee expresses concern about:

(a) The fact that the immigration legislation does not include the non-refoulement obligation provided for in article 3 of the Convention;

(b) The significant decrease in the proportion of asylum-seekers who are immediately released without restriction into the community upon arrival and the detention of several asylum-seekers in remand prisons, who are not separated from other detainees;

(c) The process of issuing a security-risk certificate under the Immigration Act, which could lead to a breach of article 3 of the Convention as the authorities may remove or deport a person deemed to constitute a threat to national security, without having to give detailed reasons or to disclose classified information to the person concerned; possibilities of effective appeal are limited; and the fact that the Minister of Immigration has to decide within three working days whether to remove or deport the person concerned;

(d) Cases of prolonged non-voluntary segregation in detention (solitary confinement), the strict conditions of which may amount, in certain circumstances, to acts prohibited by article 16 of the Convention;

(e) The low age of criminal responsibility, and the fact that juveniles are sometimes not separated from adult detainees and have been detained in police cells, owing to a shortage of Child, Youth and Family Residential Facilities;

(f) The findings of the Ombudsman regarding investigations of alleged assaults by prison staff on inmates, in particular the reluctance to address such allegations promptly and the quality, impartiality and credibility of investigations.

D. Recommendations

6. The Committee recommends that the State party:

(a) **Incorporate in its immigration legislation the non-refoulement obligation contained in article 3 of the Convention against Torture and consider establishing a single refugee determination procedure in which there is first an examination of the grounds for recognizing refugee status as contained in the 1951 Convention relating to the Status of Refugees, to be followed by the examination of other possible grounds for the grant of complementary forms of protection, in particular under article 3 of the Convention against Torture;**

(b) **Ensure at all times that the fight against terrorism does not lead to a breach of the Convention and impose undue hardship on asylum-seekers, and establish a time limit for the detention of and restrictions on asylum-seekers;**

(c) **Immediately take steps 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;**

(d) **Reduce the time and improve the conditions of non-voluntary segregation (solitary confinement) which can be imposed on asylum-seekers, prisoners and other detainees;**

(e) **Implement the recommendations made by the Committee on the Rights of the Child (CRC/C/15/Add.216, paras. 30 and 50);**

(f) **Report on the results of the development strategy aimed at ensuring that minors are not subjected to unreasonable searches;**

(g) **Carry out an inquiry into the events that led to the decision of the High Court in the *Taunoa et al.* case;**

(h) **Inform the Committee about the results of the action taken in response to the concern expressed by the Ombudsman regarding investigations of assaults by prison staff on inmates.**

7. The Committee welcomes the State party's willingness to ratify the 1954 Convention relating to the Status of Stateless Persons, and the Convention relating to the Reduction of Statelessness, and recommends that it ratify these instruments in a timely manner.
8. The Committee recommends that the State party disseminate widely the Committee's conclusions and recommendations, in appropriate languages, through official web sites, the media and non-governmental organizations.
9. The Committee requests the State party to provide, within one year, information on its response to the Committee's recommendations contained in paragraph 7 (b), (c), (d) and (h) above.
10. The Committee, considering that the third periodic report also includes the fourth periodic report due on 8 January 2003, invites the State party to submit its fifth periodic report on 8 January 2007.
