



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

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COMMITTEE AGAINST TORTURE  
Thirty-second session  
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**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 19 OF THE CONVENTION**

**Comments by the Government of New Zealand to the conclusions and  
recommendations of the Committee against Torture**

[9 June 2005]

1. The Committee Against Torture considered New Zealand's third periodic report under the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT/C/49/Add.3) at its 604<sup>th</sup>, 607<sup>th</sup> and 616<sup>th</sup> meetings, held on 11, 12 and 19 May 2004 (CAT/C/SR.604, 607 and 616). The Committee requested that New Zealand provide, within one year, information on its response to the Committee's recommendations at 6(b), (c), (d) and (h). These recommendations and New Zealand's responses are set out below.

2. The Committee may also be interested to know that New Zealand is making good progress towards being able to ratify the Optional Protocol to the Convention Against Torture. A bill making the necessary amendments to the Crimes of Torture Act is being drafted in consultation with affected agencies. However, the Government has yet to make a decision on timing for the bill's introduction to Parliament.

**“The Committee recommends that the State party:**

- (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;”

**Counter-terrorism and human rights**

3. New Zealand recognises the importance of respecting human rights and fundamental freedoms in all security and counter-terrorism efforts. In the international setting, New Zealand has co-sponsored resolutions on the promotion and protection of human rights and fundamental freedoms while countering terrorism, in the United Nations Commission on Human Rights (CHR) and the General Assembly Third Committee. At the 61<sup>st</sup> CHR, New Zealand supported the proposal to appoint a Special Rapporteur on the subject.

**Treatment of asylum seekers**

4. Accordingly, in the domestic sphere, New Zealand continues to treat all refugee status claimants in a manner consistent with its international obligations, including under the International Covenant on Civil and Political Rights, the Convention Against Torture and Other Cruel, Inhuman

and Degrading Treatment or Punishment, the Convention on the Rights of the Child and the Convention Relating to the Status of Refugees.

5. The Immigration Act 1987 contains various discretionary powers that may be exercised by immigration officers in relation to non-New Zealand citizens or residents arriving at the border, including those claiming refugee status. The full range of responses is:

- to release into the community with a permit
- to release into the community without a permit
- to detain for up to 48 hours for the purpose of releasing into the community on conditions
- to detain for up to 48 hours for the purpose of obtaining a warrant of commitment to detain further at an approved premises, like the Mangere Accommodation Centre
- to detain for up to 48 hours for the purpose of obtaining a warrant of commitment from a District Court to detain further at a penal institution.

6. In accordance with Article 31 of the Refugee Convention, any restriction on liberty must be necessary and commensurate with the risks presented by the refugee status claimant. All restrictions are subject to periodic administrative review, and detention at approved premises or at a penal institution is subject to both administrative and judicial review, the first taking place 28 days after the initial decision to detain and thereafter on a weekly basis. It is for the judge to consider the interests of the State and the rights of the refugee status claimant and to decide, within the law, whether and what sort of detention is necessary. Further, in each case, the Crown must advance and establish the necessity of the proposed detention. Regard is had not only to the Refugee Convention, but also to the New Zealand Bill of Rights Act 1990, which protects against arbitrary detention and unreasonable seizures of the person.

#### **Time limits on detention**

7. A time limit is not needed or appropriate because a judge regularly reviews detention beyond 28 days and will order such detention to continue only where it is necessary. The length of time that an individual has been subject to detention is simply one factor to be considered by the judge, together with all of the other circumstances of an individual's case, in determining whether

detention should continue and, if so, whether it should be at an approved premises or at a penal institution.

“(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;”

### **Review of security risk certificate legislation**

8. New Zealand is reviewing legislation relating to security risk certificates. The concerns the Committee has raised are being examined during that review. As the review is ongoing, New Zealand is not yet able to indicate what any new legislation might look like. That said, New Zealand attaches great importance to its international obligations and fully expects any new legislation to conform with those obligations.

### **Rights of appeal**

9. The present scheme, while necessarily safeguarding sensitive security information from disclosure, nonetheless provides effective rights of appeal against decisions made by reference to security risk certificates at each stage.

10. First, the certificate itself can be challenged by application for review to the Inspector-General of Intelligence and Security, an independent authority of high judicial standing. In undertaking a review, the Inspector-General reconsiders whether the person subject to the certificate fulfils the criteria of security risk, whether the information upon which the certificate is based is credible and whether all of that information is properly regarded as security information that cannot be disclosed. The Inspector-General has full access to security information. The Inspector-General is required to provide a reasoned decision, so far as that is possible without disclosing sensitive security information, and is in turn subject to appeal on legal grounds to the Court of Appeal.

11. The Inspector-General is currently undertaking the first review conducted under the present scheme. In the course of that review, the Inspector-General has directed that the applicant receive a summary of the grounds upon which that person is regarded as a security risk and has appointed a

senior barrister as an independent advocate for the applicant. The independent advocate has access to the security information held by the Inspector-General.

12. Secondly, any decision to detain persons who are subject to a security risk certificate is open to challenge under the present scheme both by review of the certificate itself and by application to the courts for release on bail. Bail has been granted to the one person currently subject to a security risk certificate pending the outcome of the Inspector-General's review.

13. Lastly, any decision to remove or deport persons who are subject to a security risk certificate is open to challenge by application to the courts for review. As was noted in New Zealand's response to question (i) of the Committee's supplementary questions on 12 May 2004, the scope of inquiry in such review proceedings is very broad, particularly where issues of fundamental human rights arise.

#### **Time for decision**

14. The three-day period to which the question refers relates to the decision of the Minister of Immigration to place reliance upon the security risk certificate. The separate question of whether a person subject to a security risk certificate is protected against removal or deportation by article 3(1) of the Convention or other human rights obligations need not be determined within this time limit.

#### **Ensuring respect for article 3(1)**

15. As the New Zealand government has previously advised, it is committed to compliance with article 3(1) in all immigration decisions. While not currently implemented expressly in legislation, human rights obligations such as article 3(1) are mandatory factors in immigration decision-making and will be enforced as such by the New Zealand courts.

- (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;

#### **Non-voluntary segregation of prisoners**

16. Since New Zealand last reported to the Committee in May 2004, the Corrections Act 2004 (the Act) and the Corrections Regulations 2005 (the Regulations) have both been enacted to govern

the Department of Corrections (Corrections). The Act and Regulations are scheduled to come into force on 1 June 2005.

17. With the enactment of the Act and Regulations, the United Nations Standard Minimum Rules for the Treatment of Prisoners are enshrined into New Zealand's domestic legislation.

18. The statutory framework for segregation is set down in sections 57 - 61 of the Act. Prisoners may be segregated from the mainstream prison population only if it is for the security, good order and safety of the prison (non-voluntary segregation), or for the purpose of protective custody or medical oversight of a prisoner. The new Act continues to provide for a sanction of cell confinement for a proven disciplinary offence.

19. Non-voluntary segregation is authorised under section 58(1) of the Act, which states that the prison manager may direct that the opportunity of a prisoner to associate with other prisoners be restricted or denied if, in the opinion of the manager

a) the security or good order of the prison would otherwise be endangered or prejudiced, or

b) the safety of another prisoner or another person would otherwise be endangered.

20. The new Act prescribes that the decision-making process be independently monitored at a local and national level, ensuring greater transparency of the segregation system. Section 58(3)(a) of the Act states that a direction to segregate must be revoked by the prison manager if there ceases to be any justification for continuing to restrict or deny the opportunity of the prisoner to associate with other prisoners. The Chief Executive of Corrections<sup>1</sup> or a Visiting Justice may also revoke the segregation direction at any time.

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<sup>1</sup> Or his designated National Office delegate (usually the General Manager or Assistant General Manager, Public Prisons Service).

21. Visiting Justices' powers to make segregation decisions enhance the level of independent scrutiny and monitoring safeguards on the segregation system. Visiting Justices are appointed by the Governor-General of New Zealand, upon the recommendation of the Minister of Justice. A Visiting Justice may be any District Court Judge, Justice of the Peace, or a Barrister or Solicitor of the High Court. Visiting Justices have a number of powers in respect of each prison including, among others, the authority to visit and inspect prisons; examine the treatment and conduct of prisoners; inquire into all prisoner abuses or alleged abuses; and inquire into any matter referred to him or her by the chief executive.

22. The new Act provides that a non-voluntary segregation order automatically expires after 14 days unless, before it expires, the chief executive directs that it continues in force. In the instance that it continues to be in force, the chief executive is required to review the decision at one monthly intervals. After three months the order must expire, unless a Visiting Justice directs that it continue in force. If a Visiting Justice directs that the non-voluntary segregation continue in force, then the Visiting Justice must review his or her decision at intervals of not more than three months.<sup>2</sup>

23. Protective custody may occur at the prisoner's request (section 59(1)(a)), or when the prison manager considers it necessary for the prisoner's safety (section 59(1)(b)). In the latter case, the order may be revoked at any time by the chief executive, or it will expire after 14 days unless the chief executive directs that it continue in force. If there is a direction that the protective custody continues in force, then that decision must be reviewed by the chief executive at intervals of not more than 3 months.

24. The Act also ensures that any segregated prisoner retains his or her right to complain to an inspector or to the Office of the Ombudsman at any time regarding segregation decision or conditions.

### **Prison conditions**

25. It should be noted that New Zealand does not consider non-voluntary segregation in prisons to be the equivalent of solitary confinement. This is because segregated prisoners do not, in

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<sup>2</sup> Section 58(3)(d) and (e) of the Corrections Act 2004.

general, experience a lesser standard of prison conditions compared to other accused or convicted prisoners, or lose any of their minimum entitlements, and in most instances prisoners will have opportunities to associate with other segregated prisoners.

26. Prison conditions applicable to all prisoners, including those who are segregated, are described in sections 70-82 of the new Act. These provisions prescribe the minimum standards of unlock time for prisoners to exercise, bedding, a nutritious diet, visits from family, medical treatment, mail to and from prisoners, telephone calls, and religious, spiritual and cultural needs. Corrections' maintenance of humane prison conditions is reflected by the elevation of these provisions from the Corrections Regulations 2002 to the new Act, and their alignment with the standards set out by the United Nations Standard Minimum Rules for the Treatment of Prisoners.

27. In addition, section 69 of the Act describes the minimum entitlements of every prisoner, regardless of whether they are segregated or not, and the circumstances that any minimum entitlements can be restricted or denied.<sup>3</sup> Section 69(2) provides that minimum entitlements can be denied in particular circumstances, such as if there is an emergency in the prison, or where security of the prison or the health and safety of a person is threatened. Section 69(4)(b) prescribes that only the minimum entitlement of access to information and education may be denied if a prisoner is segregated for the purposes of security, good order and safety, or protective custody.

28. Regulation 62 further clarifies that the prison conditions and treatment described in the Act are also to be applied to voluntary and non-voluntary segregated prisoners. The regulation states that a segregated prisoner, so far as practicable in the circumstances and if it is not inconsistent with the purposes of the segregation direction, must be detained under the same conditions as if he or she were not subject to a segregation direction. The regulation also prescribes that segregated prisoners must not be denied access to activities consistent with their management plan, or to his or her authorised property because they are subject to a segregation direction.

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<sup>3</sup> Prisoners' minimum entitlements include the following provisions: physical exercise, a bed and bedding, food and drink, access to private/statutory visitors and legal advisers, medical treatment, the ability to send and receive mail, make outgoing telephone calls, exercise any right to communicate as outlined by the regulations, and to access information and education.



29. Regulations 57-59 ensure that all segregated prisoners (excluding those segregated for concealing an unauthorised item internally) are held in standard cell accommodation that has the same facilities and items as cells for mainstream prisoners, unless it is not practicable to do so and the chief executive approves otherwise. Schedule 2 of the regulations prescribes the items and cell facilities for segregation purposes.<sup>4</sup>

### **Immigration detainees and asylum seekers in prison**

30. No detainee, including immigration detainees and asylum seekers, will be placed on non-voluntary segregation, unless it is for the security, good order and safety of the prison (non-voluntary segregation), for the protective custody of the prisoner (voluntary or non-voluntary segregation), or for medical oversight of a prisoner. Any detainee may request that they be segregated from other prisoners at any time.

31. The new Regulations require that Immigration Act detainees and asylum seekers be held under the same regime and have the same entitlements as accused prisoners<sup>5</sup> to ensure their safety and welfare. The regulations require that accused prisoners be kept separate from convicted prisoners, and that accused prisoners receive the same standard of treatment, or a higher standard of treatment, compared to convicted prisoners.<sup>6</sup>

“(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. “

32. In 2002, the Ombudsman expressed his concern about the length of time taken to install video cameras in volatile prison units, and the delays in reporting and investigating allegations of assault by staff on prisoners. The Ombudsman identified the difficulties in investigating allegations

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<sup>4</sup> Mandatory items/features include those such as natural and artificial lighting, a window, appropriate heating, raised sleeping platform, fresh or conditioned air. Other items include running water, intercom, an alarm or call button, and a toilet.

<sup>5</sup> Section 184 of the Corrections Regulations 2005.

<sup>6</sup> Section 185 of the Corrections Regulations 2005.

of assault in an environment where there are rarely independent witnesses to corroborate or refute allegations. The Ombudsman recommended that Corrections implement a comprehensive closed circuit television (CCTV) system in prisons to assist investigations of prisoner allegations of assaults by prison staff.

### **Investigation of assaults**

33. In January 2005, Corrections reviewed its operational policy on how allegations of staff assault, abuse, control and restraint, and the use of force must be managed. The new policy provides additional details to staff on the procedures that must be carried out if a prisoner allegation that involves any member of staff is received. The policy states that internal investigations are to be carried out in a timely manner (within one month) to ensure that stress on the staff and prisoners who are awaiting the outcome is reduced, and to maintain Corrections' credibility in terms of the humane containment of prisoners.

34. For all allegations relating to control and restraint and use of force incidents, prisoners are provided with the opportunity to lay a complaint about the incident with Police. Although these incidents are not subject to a formal internal investigation, prison managers are required to review these incidents as soon as possible after they have occurred.

35. The Corrections Act 2004 extends and strengthens the statutory provision for the internal complaints system. The Penal Institutions Regulations 2000 previously required each prison to have an internal complaints system, and to set out the objectives to be met by such systems. The Act elevates these requirements into the primary legislation, and extends the requirements to cover community work centres and probation offices in addition to prisons. Similarly, the right of access to the internal complaints system is extended beyond current prisoners to cover any persons who are or were under the control or supervision of Corrections.

36. Section 156(3) of the Act states that if an inspector investigates a complaint, the inspector must conduct the investigation reasonably promptly, and must inform the complainant and the other persons concerned promptly after the conclusion of the investigation and in a manner that the inspector considers appropriate, of:

- a) the result of the investigation; and
- b) any further action that the inspector proposes to take in respect of the complaint.

37. Corrections Regulations 2005 also add further requirements to ensure that prisoner complaints are dealt with fairly and in a timely manner. Regulation 162 requires that all complainants are to be notified within 5 working days in writing and orally, if practicable, that their complaint was received. Regulation 165(1) ensures that complainants are provided with the opportunity for an interview within 10 working days of the date on which the complaint is lodged. Complainants must also be provided with updates at monthly intervals on what progress is being made in investigating and dealing with their complaint.

38. Office of the Ombudsmen's role in managing prisoner complaints provides an important external complaint mechanism. The Office of the Ombudsman has a strong commitment to the investigation of complaints from prisoners. The new Act requires that the Chief Executive of Corrections and the Chief Ombudsman establish a formal protocol to recognise and explain their co-operative working relationship. The first protocol was established in 2000. The protocol does not limit the powers of the Ombudsmen under the Ombudsmen Act 1975.

#### **Auckland East Regional Prison**

39. Corrections acknowledges that on some occasions there have been unacceptable reporting/investigation delays where the allegations involve staff. Corrections recognises that such delays are undesirable because they have the potential to compromise the quality of future investigations, and they threaten the credibility and transparency of the complaints system.

The reporting delays previously experienced at Auckland East Regional Prison, which formed the basis for the Ombudsman's concerns, have been addressed by the implementation of a more robust regional tracking and monitoring regime for complaints.

#### **Use of CCTV in prisons**

40. The installation of CCTV covering recreation or common areas in a prison wing has become a facility standard for all new prisons.<sup>7</sup> As funding allows Corrections intends to upgrade all existing prisons to also meet this standard.

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<sup>7</sup> New Zealand is planning to open four new prisons between March 2005 and 2007: Northland Region Corrections Facility (NRCF), which opened on 8 March 2005, Auckland Women's Corrections Facility, Spring Hill Corrections Facility and Otago Region Corrections Facility.

41. Work to install CCTV cameras in Auckland East Regional Prison, New Zealand's only maximum security facility, commenced mid-2004, with funding of \$NZ 1.1 million allocated for this purpose. As at March 2005, this work was ongoing as it was necessary to expand the project scope to increase image storage time and enhance image clarity.

42. Additional operational policy and procedures on emergency response management were recently introduced to assist staff. The policy requires that prison staff are videotaped, where practicable, when any emergency response related use of force events or major incidents occur in prisons.

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