



HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS  
PALAIS DES NATIONS • 1211 GENEVA 10, SWITZERLAND

www.ohchr.org • TEL: +41 22 917 9000 • FAX: +41 22 917 9008 • E-MAIL: registry@ohchr.org

REFERENCE: cc/jmn/fjl/follow-up/CAT

7 May 2012

Excellency,

In my capacity as Rapporteur for Follow-up on Concluding Observations of the United Nations Committee against Torture (CAT), I am writing regarding the examination of the fifth periodic report of New Zealand (CAT/C/NZL/5) on 1 and 4 May 2009. The Committee requested further information from your Government in response to the Committee's recommendations in paragraphs 9, 11, 14, and 16 of the Concluding Observations (CAT/C/NZL/CO/5).

On behalf of the Committee, allow me to express appreciation for your Government's reply of 19 May 2010 (CAT/C/CO/5/Add. 1) providing the Committee with comments on those recommendations. I have reviewed them with care and am writing to seek further clarification, as there remain outstanding questions about the implementation of the recommendations in practice. We would be grateful if your clarification could reach us by July 1.

Conditions of detention (paragraph 9)

The Committee appreciates the information provided by the State party concerning measures it has considered and taken to reduce overcrowding in places of detention, a factor which is related to inter-prisoner violence. In order to better assess the effectiveness of the measures instituted and planned for the future, the Committee would appreciate further data, specifically data on the prison population, including the capacity and occupancy rate of all places of deprivation of liberty for 2009, 2010, and, if possible, 2011.

Please also provide additional information regarding the information in paragraphs 2 and 3 of your Government's follow-up submission concerning the Department of Corrections' plans to eliminate the short-term practice of "double-bunking." In particular, please elaborate on measures taken to reduce the length of time that prisoners are held in custody on remand and to change sentencing practices, indicating whether the plans mentioned have been implemented to date, and if they have, please describe their impact. Please also indicate whether the State party has increased its use of noncustodial forms of detention for adult prisoners in line with the UN Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), as suggested in the Committee's concluding observations. Please provide data on the number of prisoners out of the total convicted (since the last report) who were given a non-custodial sentence in 2009, 2010, and 2011, and provide information on the types of noncustodial sentences awarded.

Regarding the practice of "double-bunking" please provide data on the number of persons in detention in shared cells in these years. Additionally, inasmuch as the Committee has received information alleging that the State has implemented the practice of "triple-bunking" in some places of detention, please comment on this claim, including whether this practice has been used in any detention facilities. Please provide data on the number of persons, if any, in detention in such accommodations.

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H.E. Ms. Dell Higgin  
Ambassador Extraordinary and Plenipotentiary  
Permanent Representative of New Zealand  
to the United Nations Office at Geneva  
Fax: 022 929 03 74



The Committee appreciates the State party's statement in paragraph 7 of the follow-up submission that in practice, detention in custody is used as a last resort for young offenders, and the data provided as to the total number of minors prosecuted in the Youth Court in 2008 and the number of those juveniles given a custodial sentence. Please provide similar data on the rate at which minors prosecuted in the Youth Court were given a custodial sentence for 2009, and, if possible, 2010 and 2011.

The Committee notes with interest the information from the State party in paragraphs 8 and 11 that more forensic beds are needed to accommodate persons in detention with mental health issues. Please provide data on the number of forensic beds available at the District Health Board (DHB) Regional Forensic Psychiatry Services in the greater Auckland region, disaggregated by facility, for 2009, 2010, and, if possible, 2011, and the number of individuals on the wait lists for those facilities for each year.

Regarding legal services provided to inmates suffering from mental illnesses, please indicate any special measures the State party takes to ensure that individuals diagnosed with mental illnesses or mental or intellectual disabilities are made aware of their rights to contact an attorney and their potential eligibility for public funding for legal services, so as to ensure that such individuals have an *effective* right to legal representation.

The Committee has received reports that in 2008-2009, the Chief Ombudsman encountered two cases of possible cruel and inhuman treatment of persons with mental disabilities detained in conditions of seclusion by the State party: a case of a mental health patient who had been subjected to restraint and seclusion for nearly six years and a young mentally disabled patient who had been kept in seclusion for an unreasonably long period. The Committee is particularly concerned to learn that the latter individual was transferred to a more suitable facility only 13 months *after* the date expected by the Ombudsmen. Please indicate the measures the State party is taking to ensure that individuals with mental disabilities are not unreasonably restrained and/or held in seclusion for unreasonable periods of time. Please clarify whether acts by officials responsible for the above-mentioned cases were investigated and whether anyone received administrative or criminal penalties, and what they were.

The Committee also has received reports claiming that the State party's officials did not adequately rectify a problem identified by the Ombudsmen in 2008-2009 concerning the fact that several persons convicted of crimes (who were the subject of "hybrid orders" that both sentenced them to a term of imprisonment and ordered their detention in a hospital on mental health grounds) had been denied notice of and an opportunity to attend parole hearings as a result of inconsistent and inaccurate record-keeping by the governmental entities involved. The Committee notes the concern raised by the Ombudsmen that other offenders who were subject to "hybrid orders" may have been arbitrarily denied parole hearings. Please provide updated information on the steps taken by the State party to ensure that this problem is rectified. Please also provide information taken by the State party to ensure that reports of the Ombudsmen are promptly addressed by relevant officials.

The Committee appreciates the information provided in paragraphs 16-18 regarding the fact that the use of instruments of restraint is regularly reviewed by the Prison Services. Please provide data on the number of complaints, incidents, or issues referred to the Prison Inspectorate regarding the use of instruments of restraint from 2009-2010 and the outcome of any investigations into such complaints. Please also provide data on any other internal or external complaints or legal proceedings pursued by prisoners regarding allegedly improper use of instruments of restraint during that time period, as well as the outcome of any investigations.



### Allegations of ill-treatment (paragraph 11)

The Committee appreciates the information provided by the State party regarding measures it has taken to ensure that allegations of torture or ill-treatment in the "historic cases" are investigated, perpetrators prosecuted, and victims afforded redress.

Please clarify the situation regarding court claims made in connection with allegations of "historic abuse," by submitting data on the total number of court claims disaggregated by the agency alleged to be responsible, the total number that resulted in settlement, and the total number that proceeded to trial, the number of these that resulted in a decision in favor of the complainant, and the amount of compensation or other redress awarded in each such case by the courts. The Committee is concerned that, according to statements in the follow-up submission, effective judicial redress may not be available for victims of the historic cases on the grounds that the victims' claims are subject to statutes of limitations or statutory restrictions on liability. The Committee notes that article 14 of the Convention requires States parties to the Convention to ensure that victims of torture and ill-treatment obtain redress. Please elaborate on measures the State party is taking to eliminate obstacles to redress affecting victims of torture or ill-treatment connected with "historic abuses," including statutes of limitations on torture or ill-treatment and other statutory barriers.

Please provide additional information regarding the Care Claims and Resolution Team (CCRT) referred to in paragraph 30 of the follow-up submission. Please elaborate on the composition of the Team and whether its members are employed by the Ministry of Social Development (MSD) and indicate the measures in place to ensure that it is capable of conducting prompt, independent investigations into allegations of torture and ill-treatment. Please provide data on the number of claims that have been received by the CCRT since its establishment. Please also clarify whether all of the 165 claims of torture or ill-treatment in State institutions received by the MSD referenced in paragraph 37 of the follow-up submission and these claims were submitted to the CCRT, and indicate how many of these remain outstanding. Please indicate the number of claims submitted to the CCRT that have been subsequently referred to the police. Please provide data concerning the number of compensation awards made by the CCRT/MSD and the amount of compensation awarded in each case. Please indicate whether any "historic abuse" claims regarding MSD personnel have resulted in disciplinary action, and provide details, including the nature of the disciplinary penalty handed down.

Regarding the 252 claims of torture or ill-treatment against the Crown Health Financing Agency (CHFA) referred to in paragraph 42, please provide updated data indicating the total number of claims received to date, the number investigated, the number outstanding, the number that have resulted in a finding of wrongdoing, and the remedial actions taken in such cases. Please indicate whether any "historic abuse" claims regarding CHFA personnel have resulted in disciplinary action, and provide details on any such instances, including the nature of the penalties issued.

Please also provide data concerning the total number of "historic abuse" claims that have been received by the police, specifically indicating the number submitted by MSD following referral to the CCRT, the number submitted by the CHFA, and the number submitted by private individuals. Please specify the number of these complaints that were investigated and the number that have resulted in criminal prosecutions, and indicate the outcome of any such prosecutions.

While appreciating the measures already taken by the State party in regard to claims arising from Lake Alice Hospital, the Committee would appreciate receiving data on the total amount of compensation awarded to victims of torture and ill-treatment perpetrated between 1972 and 1977, the number of victims that received compensation, the amount of compensation awarded to each victim, and the maximum and minimum amount awarded to such victims. The



Committee is concerned by information it has received claiming that the Government deducted legal fees from the compensation awards made to a significant number of the Lake Alice victims, the first group of which reportedly received independent legal assistance, and the second group of which received legal assistance from the State. Please provide data on the total amount of compensation awards withheld from victims of abuse at Lake Alice to provide for legal fees and indicate whether these fees were taken into consideration as former judge Gallen was determining the appropriate compensation award for each victim.

The Committee is further concerned regarding allegations it has received that the State party has not conducted a prompt, impartial and effective investigation into all claims of abuse from Lake Alice or to prosecute alleged perpetrators of the torture and ill-treatment perpetrated there. Please clarify whether the State party intends to carry out an impartial investigation into the nearly 200 allegations of torture and ill-treatment against minors at Lake Alice, to criminally prosecute individuals found to have perpetrated this abuse, and to punish such perpetrators. Please indicate any steps the State party is taking to assess independently the sufficiency of the police investigation into the Lake Alice claims, which the Committee understands was closed in 2009, to inquire into complaints that police failed to interview a number of the alleged victims who filed complaints, and to re-open that investigation.

Please also indicate what measures the State party has put in place to ensure that torture and ill-treatment are not perpetrated in such State facilities in the future and how these measures are monitored. Please indicate if the State party is considering establishing an independent oversight mechanism for psychiatric facilities. Please also indicate whether the State party intends to make public the report of the New Zealand Human Rights Commission on allegations of psychiatric abuse, including in State institutions, and, if so, when this is expected to occur.

#### Withdrawal of reservation to article 14 (paragraph 14)

The Committee notes with interest the information from the State party that it is continuing to consider steps that might be needed to withdraw its reservation to article 14 of the Convention on redress, as mentioned in paragraph 62. It would appreciate an update.

#### Use of taser weapons (paragraph 16)

While the Committee appreciates the information provided regarding the safeguards governing the use of electric taser weapons by the police, and the State party's view that their use does not constitute torture or ill-treatment, the Committee continues to have serious concerns and questions about their use in the State party. Please clarify if the State party has reconsidered its previous position regarding relinquishing their use?

In this regard, please provide updated data on the total number of police officers and the number of police officers certified to use taser weapons. Regarding the safeguards in place to govern the use of taser weapons described in paragraphs 68-74, please indicate if any authority other than the supervisor of the officer deploying the taser monitors compliance with these safeguards. If so, please describe how this monitoring function is carried out. Please indicate if any police personnel have been subjected to disciplinary or criminal measures for improper taser use. Please clarify whether any complaints regarding taser use been submitted to the Independent Police Conduct Authority, and indicate whether any such complaints resulted in criminal prosecution or disciplinary action, and if so, please outline their outcomes.

Accept, Excellency, the assurances of my highest consideration.

Felice D. Gaer

Rapporteur for Follow-Up on Concluding Observations  
Committee against Torture