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**Comments of the**

**New Zealand Human Rights Commission**

**on**

**New Zealand’s implementation**

**of the**

**United Nations**

**Convention Against Torture**

**For consideration in relation to**

**New Zealand’s Fifth Periodic Report**

**42nd Session – Committee Against Torture**

**27 April – 15 May 2009**

**Comments of the New Zealand Human Rights Commission**

**on New Zealand’s implementation of the**

**United Nations Convention Against Torture**

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ISBN: 978-0-478-32944-5 (Word)

Human Rights Commission 2009  
[www.hrc.co.nz](http://www.hrc.co.nz)

# Introduction

* 1. The New Zealand Human Rights Commission (the Commission) appreciates the opportunity to provide information to the Committee Against Torture (the Committee) in relation to the Committee’s consideration of New Zealand’s fifth periodic report.
  2. The Commission is an independent national human rights institution with ‘A’ status accreditation from the International Co-ordinating Committee of National Human Rights Institutions. It derives its statutory mandate from the Human Rights Act 1993.
  3. This report is provided with the aim of updating the Committee on recent developments and identifying what the Commission views as key achievements and significant challenges for New Zealand’s implementation of the Convention.

# Summary of achievements and challenges

* 1. In 2004 the Commission published a comprehensive baseline review of human rights in New Zealand.[[1]](#footnote-1) The reviewfound that New Zealand met international human rights standards in many respects and had most of the elements necessary for the effective protection, promotion and fulfilment of human rights. At the same time it highlighted a number of pressing human rights issues, which included: the vulnerability of children and young people and of people in detention; and the need for explicit recognition of human rights standards at all levels of New Zealand society.
  2. The review provided the evidential basis for *The New Zealand Action Plan for Human Rights / Mana ki te Tangata*, published in 2005. It identified actions for the five years to 2010 that were required to address the issues identified in the review and better promote and protect human rights.[[2]](#footnote-2)
  3. In 2008 the Commission reviewed the progress that has been made during the first three of the Action Plan’s five years. The Commission notes some significant developments, including:
* New Zealand’s ratification of the Optional Protocol to the Convention and establishment of National Preventive Mechanisms;
* ratification of the Convention on the Rights of Persons with Disabilities;
* reviews of the legislation governing policing and corrections, which have resulted in improvements to the law in those areas;
* improvements to the law allowing children of female prisoners to be accommodated with their mothers;
* increased provision of drug and alcohol services, employment and education opportunities in prisons;
* an increase in the number of beds available in Child, Youth and Family facilities;
* amendment of the law dealing with corporal punishment of children in the home; and
* proposed legislation to extend the protections of the Children, Young Persons and their Families Act 1989 to include 17 year olds (although the Commission notes with concern that there are now indications that this proposal may not be passed into law).
  1. Significant challenges remain, such as:
* ensuring that all National Preventive Mechanisms are adequately resourced to effectively fulfil their new responsibilities;
* addressing the risks and issues associated with the introduction of tasers;
* improving the provision of mental health services for people in prison;
* addressing the disproportionate number of Māori in prison, the high overall levels of imprisonment and the human rights implications of resulting capacity and staffing pressures;
* removing New Zealand’s treaty reservations regarding the mixing of adults and young people in detention;
* implementing a systematic and comprehensive approach to human rights education for law enforcement personnel and staff of places of detention and ensuring that human rights are fully integrated into day to day practices;
* ensuring that immigration legislation is fully compliant with human rights standards;
* providing an appropriate process for resolving historical claims of abuse experienced by people detained or in the care of the State; and
* further strengthening victim’s rights and access to compensation and withdrawal of the reservation to Article 14.
  1. The Commission would welcome the Committee’s consideration of these issues.

# Prevention of torture and cruel, inhuman or degrading treatment or punishment (Articles 2 and 16)

## Optional Protocol to the Convention against Torture

* 1. In 2007 New Zealand ratified the Optional Protocol to the Convention against Torture (OPCAT) and established National Preventive Mechanisms (NPMs) to give it effect.
  2. The Ombudsman, the Independent Police Conduct Authority (IPCA), the Children’s Commissioner and the Inspector of Service Penal Establishments have each been designated as NPMs to inspect and monitor specific categories of places of detention. The Human Rights Commission has been appointed to a coordinating role as the designated Central National Preventive Mechanism.
  3. Establishment of the post of Inspector of Service Penal Establishments to monitor Defence Force facilities is a noteworthy development, as prior to OPCAT ratification military facilities were not subject to regular external monitoring or review.
  4. The first collated annual report of the five OPCAT organisations has been published, and is provided herewith for the Committee’s information. Activities in the first year focussed on planning and piloting the monitoring system, and preparing for monitoring programmes to be implemented in the following year.
  5. Scoping work and initial monitoring visits have highlighted challenging issues across the various detention contexts, including:
* ensuring that all facilities are suitable for the purpose;
* the need for adequate staffing levels, training and specialist staff; and
* the need for particular attention to the rights of specific groups such as children and young people, asylum seekers and disabled people.
  1. A further challenge is that the NPMs are small organisations and to varying extents, the NPM responsibilities represent a significant expansion of role and workload. Scoping activities undertaken in the first year have assisted NPMs to gauge the level of resources that their preventive monitoring will require and some additional resource needs have been identified for consideration in budget allocations. These include the IPCA’s need for funding in order to implement its planned monitoring programme.
  2. **The Commission acknowledges the government’s commitment to ratifying and implementing OPCAT and the cooperation provided to NPMs to date by the agencies and institutions involved. The Commission and designated NPMs are confident that the implementation of OPCAT in New Zealand will help to strengthen the protection of the rights of people in detention.**
  3. **The Commission would like to highlight the importance of continued cooperation and the need to ensure that NPMs are adequately resourced to effectively and independently carry out their roles.**

## Police

### Police Act Review

* 1. The Policing Act 2008 was enacted following a substantial review of policing legislation. The Commission acknowledges the considerable efforts undertaken to engage in public consultation in the course of the review.
  2. **The Commission welcomed the inclusion of a set of principles in the new Policing Act, including the principle that “policing services are provided in a manner that respects human rights”; and the subsequent development of a Code of Conduct for all Police employees.**

### Independent Police Conduct Authority

* 1. Independent monitoring of the Police has been enhanced through the amendment in 2007 of the Independent Police Conduct Authority Act 1988. The amendments included expanding the IPCA’s membership from a single person to a Board of up to five people; and providing the IPCA with the same powers as Commissions of Inquiry, including powers to receive evidence, examine documents, and summon witnesses.
  2. **These changes, along with the IPCA’s designation as a National Preventive Mechanism, have expanded and strengthened the powers and capacity of the IPCA to conduct its own independent investigations and monitoring of Police.** **The Commission notes the importance of ensuring that adequate funding and resources are also provided to the IPCA to enable it to meet its extended role and functions.**

### Tasers

* 1. In August 2008 the Police Commissioner announced the nationwide introduction of the Taser X26, following a 12 month trial in four police districts in 2006-07.
  2. An evaluation report prepared by the Police analysed taser use during the trial and reviewed international literature, health and safety issues, the Standard Operating Procedures (SOPs) used, and perceived benefits and disadvantages of tasers. The report concluded that on balance, the taser trial had proved successful.[[3]](#footnote-3)
  3. While the report noted support for the introduction of tasers among Police and the public, some significant concerns have been raised by those opposed to taser use. These include concerns about the risks of injuries or death resulting from taser use; the potential for excessive or inappropriate use; and the possibility that certain groups, such as those with mental health issues, Māori or Pacific peoples, may be disproportionately affected.[[4]](#footnote-4)
  4. The latter concerns appear to be borne out to some extent in the trial data. The trial evaluation reports that 21% of taser incidents involved people who appeared to be experiencing mental health issues, and 58% of incidents involved Māori or Pacific Island subjects.[[5]](#footnote-5)
  5. It is also noted that, while the SOPs require officers to consider the age of a subject when determining whether taser use is warranted, there are otherwise no specific requirements in relation to use of the taser on children or young people. During the taser trial, five people in the 14-16 year old age group were involved in taser incidents (although the tasers were not discharged in those incidents).[[6]](#footnote-6)
  6. Concerns have also been raised regarding Police adherence to SOPs and the potential for the taser to become a routine option, rather than a measure of last resort. While the SOPs specify that tasers may only be used in situations involving ‘assaultive’ behaviour, there appear to be examples during the trial of tasers being used in situations falling short of the ‘assaultive’ threat level required by the SOP.[[7]](#footnote-7) The trial evaluation report also notes comments by some officers on perceived operational challenges in situations that border on, but do not reach the required level of assaultive behaviour, and concerns about the risks of under-assessing situations[[8]](#footnote-8) (from which it could be inferred that there is some likelihood of officers tending to err in favour of using a taser if in doubt).
  7. These issues highlight the potential for ‘creep’ to occur – that is, for greater reliance to be placed on tasers than only as a measure of last resort, and for tasers to be used outside the stipulations of the SOPs.
  8. There have been some issues around the transparency of the trial and decision making process, and the lack of wide public consultation. While regular updates and summary reports of taser use were released during the trial, more detailed information from incident reports sought by members of civil society, was initially withheld by police. The Ombudsman, in upholding a complaint under the Official Information Act, highlighted the importance of transparency and accountability around the taser trial, and found that many of the brief summaries released had the effect of sanitising the original reports. The incident reports are now available on the Police website.[[9]](#footnote-9)
  9. **The introduction of tasers represents a departure from New Zealand’s tradition of a relatively unarmed police force. There are a number of concerns and potential risks surrounding the taser that highlight the need for stringent safeguards, full transparency and accountability if their use is to continue.**

## Prisons

### New Zealand Action Plan for Human Rights

* 1. Research undertaken by the Commission in the development of the *New Zealand Action Plan for Human Rights* (the Action Plan) highlighted the vulnerability to abuse of people in detention as one of the most pressing human rights issues facing New Zealand.
  2. The Commission found that, while much of New Zealand’s law and policy regarding the corrections system is well developed and generally consistent with international standards, their application in practice can be problematic. The key areas of concern highlighted in relation to prisons, included:
* Concerns about the use of non-voluntary segregation and excessive periods of lock-down;
* The need for continuing efforts to ensure the safety of prisoners and staff;
* The need for close and specific monitoring of provisions for refugees and asylum seekers, pregnant women, and prisoners who are physically or mentally unwell;
* The lack of reliable data on the numbers of prisoners who have a disability;
* The fact that a small number of prisoners requiring urgent treatment for mental illnesses remained in prison while waiting for an available bed in a forensic mental health facility;
* Workforce development issues, including staff-to-prisoner ratios and the need for human rights training to be mainstreamed into staff training; and
* Age mixing of youth and adult offenders and New Zealand’s reservation to the Convention on the Rights of the Child on this point.
  1. The Commission’s monitoring of progress on the Action Plan has found that, while there have been a number of positive developments (including improvements through the enactment of the Corrections Act 2004 and other justice sector initiatives), there are indications that many of the issues identified in 2004 remain of continuing concern.
  2. The Commission has also commissioned further research into the human rights of people in prisons to be undertaken in 2009, to update its earlier research and provide baseline information to inform both OPCAT monitoring activities and the development of a new Action Plan in 2010.

### Corrections Act 2004

* 1. The Corrections Act 2004 (and Corrections Regulations 2005) were enacted during the reporting period and govern the administration of prisons.
  2. **Positive features of the new legislation include the explicit reference in the Act’s purpose statement to compliance with the *United Nations Standard Minimum Rules for the Treatment of Prisoners* and to the role of the corrections system in providing rehabilitation and reintegration. The inclusion of prisoners’ minimum entitlements in the legislation; expansion of complaints provisions and their elevation to primary legislation; and improvements to the disciplinary offence regime are also notable developments.**
  3. The Corrections Act also ended contractual arrangements that allowed for the private management of prisons, an issue that had been raised by the Human Rights Committee when it last reviewed New Zealand’s compliance with the ICCPR.[[10]](#footnote-10) This issue is now being revisited and is discussed further below.[[11]](#footnote-11)
  4. **A further amendment to the Corrections Act in 2007 extended the period that children of female prisoners may be accommodated with their mothers for the purposes of breastfeeding and bonding. Extension of the upper age limit from six to 24 months; explicit inclusion of the child’s best interests as a mandatory consideration; and stipulations concerning the provision of appropriate facilities (to the extent practicable within available resources); are positive developments in terms of the rights of imprisoned mothers and their children.**

### Ombudsmen’s new responsibilities

* 1. **Independent oversight of prisons has been enhanced through expansion of the role of the Ombudsmen in relation to prisons to include new responsibilities for: investigating all deaths in custody and designated serious incidents; and undertaking more reviews of systemic issues. In addition, the Ombudsmen have assumed their NPM monitoring role under OPCAT.**
  2. During the reporting period, the Ombudsmen have also conducted major thematic investigations into issues concerning the corrections system, which are discussed further below.

### Ombudsmen’s Investigations

* 1. In 2005, the Ombudsmen reported on their *Investigation of the Department of Corrections in relation to the detention and treatment of prisoners*.[[12]](#footnote-12) While finding no systemic ill-treatment or abuse, the Ombudsmen raised a number of issues of concern requiring attention.
  2. These included: lack of work, programmes and other meaningful activity; lack of recreation; a policy (the ‘66% rule’) involving postponement of completion of programmes for high risk prisoners until the later stage of a sentence, with implications on the possibility of parole; adequacy of nursing cover and dental services; staff training issues and need for closer liaison between the National Office and staff in prisons.
  3. The Commission notes that progress has occurred in a number of areas, including: expansion of the Inmate Employment Strategy, release to work scheme and prisoner reintegration programmes.[[13]](#footnote-13) Some outstanding issues are discussed further below.
  4. The 2007 report of the Ombudsmen’s *Investigation into the Transport of Prisoners* [[14]](#footnote-14) concluded that many aspects of prisoner transport fell short of the standard necessary for safe and humane transport. The Ombudsmen’s recommendations highlighted, among other things, the need for: improved surveillance and communication during transport; alignment of Police and Corrections’ definitions of young prisoners; review of the Department’s vehicle fleet; and national standards in a number of areas.
  5. The Commission notes actions taken by the Department of Corrections to progress the Ombudsmen’s recommendations. These have included: the establishment of a project to review prisoner transport; steps to better ensure the separation of young prisoners from adults; improvements to the provision of food and water; and introduction of mandatory rest breaks on longer journeys.[[15]](#footnote-15)
  6. **As a means of preventing prisoner assaults the Department has introduced the use of waist restraints as a general practice during prisoner transport. The Commission shares the Ombudsmen’s concerns about this practice and supports their recommendation that a more suitable solution should be devised through the Department’s prisoner transport project. [[16]](#footnote-16)**
  7. The Ombudsman’s 2007 *Investigation into Issues Involving the Criminal Justice Sector* also raised issues concerning the Department of Corrections, noting that a number of problems have been exacerbated by the pressures arising from growth in the prison population and other issues such as recruitment and training.[[17]](#footnote-17)

### Mental health issues

* 1. Serious mental illnesses (psychotic illness, bipolar mood disorder and major depression) are over represented in prison, with an estimated 15-25% of prisoners in need of specialist mental health care, and 80% affected by substance misuse problems.[[18]](#footnote-18)
  2. The Commission’s 2004 research identified issues regarding the conditions for people in prisons who have disabilities or mental illnesses. The availability and accessibility of appropriate facilities and services, and the lack of data on disabled people in prison were among the concerns raised. These remain ongoing issues of concern.
  3. The continued need for quality data on prisoners’ mental health needs could be advanced through the full implementation of a mental health screening tool that has been developed and trialled, and through additional periodic screening.
  4. Adequate training is also required to ensure that prison staff are able to deal appropriately with mentally unwell prisoners and recognise when health intervention is called for.[[19]](#footnote-19)
  5. Timely access to services remains an issue – particularly for those with mild to moderate mental illness, women, those with personality disorders and Māori.[[20]](#footnote-20)
  6. We note the comments of one mental health expert, which highlight the continued need for increased availability of appropriate forensic facilities and services:[[21]](#footnote-21)

[D]ifficulties have emerged at the interface of forensic and general mental health (over the definitions of target populations) and between FMHS (Forensic Mental Health Services) and prisons (increasing musters/criminalisation of mentally ill persons). Inpatient facilities average over 100% occupancy. Waiting lists for admission to a hospital bed have developed in recent years as prison muster rises have put pressure on forensic inpatient services.

* 1. The Department of Corrections and Ministry of Health are working to address a gap in services for prisoners with personality disorders, and the Ombudsmen have recently stressed the urgency of dealing with this issue.
  2. We further note the Ombudsmen’s comments that:[[22]](#footnote-22)

The present unsatisfactory situation places other prisoners and staff at risk; it undoubtedly plays a part in the incidence of self-harm and suicides in prison; and it makes management of the prison more stressful than it need be as lay staff struggle with assessing and managing this element of the prison population.

* 1. **Complex issues around people in prison who require mental health care pose significant challenges and need urgent attention.**

### Transgender people

* 1. The Commission’s *Inquiry into Discrimination Experienced by Transgender People*,[[23]](#footnote-23) completed in January 2008, highlighted particular issues for trans people in prison, including: issues regarding their placement; search procedures; vulnerability to discrimination, harassment or abuse; and access to health services such as hormone treatments while in prison.
  2. One of the Inquiry’s recommendations was to bring together government agencies to share best practice for search, detention and imprisonment of trans people, which the Commission has facilitated through two dialogue sessions. As a result of these sessions, government agencies are looking at whether changes are needed in their current policies and practices, and are expected to report back to the Ministry of Justice by April 2009.

### Over-representation of Māori

* 1. Though forming just 12.5% of the population aged 15 and over, 42% of all criminal apprehensions involve a person identifying as Māori, as do 50% of all persons in prison.[[24]](#footnote-24)
  2. To a large extent this can be attributed to the lower social and economic circumstances of Māori overall, but there is an element of bias in the justice system which leads to Māori being more likely to be apprehended and more severely punished than non-Māori.[[25]](#footnote-25)
  3. The importance of accessibility and effectiveness of key services of health, education and social support for Māori has been highlighted,[[26]](#footnote-26) as has the importance of promoting Māori participation as providers of support, rehabilitation, reintegration, restorative justice and other programmes.[[27]](#footnote-27)
  4. **The Commission has recommended that the government commit to specific targets and timelines for reducing the disproportionate number of Māori in prison.**

### Capacity issues

* 1. The Commission’s 2004 research, *Human Rights in New Zealand Today*, highlighted the need to upgrade and increase the capacity of prisons and alternatives to prisons.
  2. Since that research was undertaken, the prison population has risen by around a further 30%, despite some initiatives which have attempted to curb New Zealand’s high imprisonment rate.
  3. The introduction of new community sentences has had some effect in slowing the growth of the prison population, but rapid uptake of the community sentences has in turn created new pressures on the Community Probation Service.
  4. Four new prisons have been opened in the past five years to try and meet the growth in prisoner numbers. Along with expansion of existing facilities, this has increased prison capacity by 2,400 beds. However, the prison population has continued to rise and furthermore, some existing facilities are no longer fit for purpose and are in need of replacement. As a result, the prison system is facing a capacity crisis, with the prison population forecast to exceed existing capacity by mid-2010 and at least 2,200 more beds needed by 2016. [[28]](#footnote-28)
  5. Factors impacting upon the continued growth in the prison population include: higher Police numbers, higher rates of resolution of crime, greater use of custody remands, longer average imposed sentence lengths, and tightening of parole release decisions.[[29]](#footnote-29) A number of recent and proposed legislative changes that entail longer sentences and more restrictive approaches to bail or parole are expected to result in further significant increases.[[30]](#footnote-30)
  6. Proposals in response to the impending capacity crisis include: contracting out the management of prisons, cost cutting in construction of new facilities, and accommodating two prisoners in a cell (“double bunking”).
  7. The Commission notes with concern that capacity pressures are likely to result in the use of inadequate facilities (such as police cells and other measures described as “additional though substandard capacity available for emergency use”).
  8. The Commission also notes the undesirability of having two prisoners sharing a cell (as noted in the *Standard Minimum Rules,* rule 9(1)) and is aware of the strong concerns that have been expressed by prison staff that the measure is likely to lead to increased tensions and violence.[[31]](#footnote-31)
  9. Lack of appropriate facilities contributes to a number of other human rights issues, such as mixing of remand and sentenced prisoners, age mixing, and increased lock down periods. Access to employment, education, health services, treatment programmes, recreation and visitors are all likely to be affected by capacity and staffing pressures.
  10. **As such, the Commission has urged the government to commit to specific targets and timelines for reducing the high levels of imprisonment.**

### Staffing issues

* 1. The ongoing growth in the prison population is also likely to increase the pressures on staff. The Commission’s previous research found that New Zealand did not rate well against international comparisons for staff-to-prisoner ratios.
  2. The need for substantial staff recruitment over recent years has resulted in a high proportion of Department of Corrections staff (40%) with less than two years’ experience.[[32]](#footnote-32) The Commission has concerns about the impact of further growth on staffing levels, noting reports that current levels are already stretched.
  3. **The Commission’s research has also found that while in many respects, the legislative and policy framework for corrections is consistent with human rights standards, it is at the operational level that problems often occur. The Commission therefore stresses the importance of comprehensively integrating human rights into Corrections staff training and day to day practices.**

### Private management of prisons

* 1. In 2002 the Human Rights Committee expressed concern that the management of one prison and prison escort services had been contracted to private companies, and welcomed New Zealand’s intention to cease private management of prisons. This was subsequently implemented through the enactment of the Corrections Act 2004. The Committee was “concerned about whether the practice of privatisation, in an area where the State is responsible for protecting the rights of persons whom it has deprived of their liberty, effectively meets the obligations of the State party under the Covenant and its own accountability for any violations”. [[33]](#footnote-33)
  2. The current government has introduced a bill to once again enable prison management to be contracted to private parties. The Corrections (Contract Management of Prisons) Amendment Bill includes requirements that contractors comply with relevant international obligations and standards and report regularly to the Minister of Corrections on a range of matters including staff training, prison programmes, prisoner complaints, disciplinary actions, and incidents involving violence or self-inflicted injuries.
  3. The Commission notes that the evidence is equivocal as to the benefits of privately managed prisons, and concerns about the performance of some private prisons overseas. Reported statements by prison unions that, while under private management, Auckland’s remand prison had a much lower staff to prisoner ratio than publicly managed prisons (1:50 compared with 1:15 in public prisons), lower staff salaries and reduced services (such as refusing to admit prisoners after 6.30 pm), are also of concern.[[34]](#footnote-34)
  4. **Although steps have been taken to mitigate some of the risks inherent in private management of prisons, if this option is to be adopted, ensuring full accountability and independent scrutiny (including oversight by the Ombudsmen), will be essential.**

## Children and Young People

* 1. The Committee previously recommended that New Zealand implement the recommendations of the Committee on the Rights of the Child (CRC), which included recommendations concerning corporal punishment in the home, implementation of international standards for juvenile justice, and ensuring the availability of sufficient youth justice facilities so that young people in detention are held separately from adults.

### Corporal punishment in the home

* 1. **The legal framework protecting the rights of children and young people has been greatly strengthened by the amendment in 2007 of Section 59 of the Crimes Act 1961, which deals with corporal punishment of children by parents or guardians. The amendment removed justification of the use of force for the purpose of correction.**
  2. A citizens initiated referendum brought by opponents of the s.59 amendment is to be held in July. While the referendum will not be binding on the government, there is potential for progress in this area to be undermined if the law and relevant human rights obligations are not properly understood.
  3. **There are indications that the law change is not well understood and that resources need to be committed to raising awareness of the law and of children’s right to protection. [[35]](#footnote-35) There is also a need for continued promotion of positive, non-violent forms of discipline.**

### Youth Justice

* 1. The Children, Young Persons and their Families Act 1989 deals with child and youth offending. Offending by children (aged 10-13) is generally dealt with by the Family Court under the Act’s ‘care and protection’ provisions, although children may be prosecuted for murder or manslaughter. Young people (aged 14-16) are subject to the Act’s ‘youth justice’ provisions and dealt with by the Youth Court. The CRC has previously recommended that New Zealand raise the minimum age of criminal responsibility and that the upper age limit of the Act is raised to align with the UNCROC definition of the child.[[36]](#footnote-36)
  2. The Commission welcomed the introduction of the Children, Young Persons and their Families Amendment Bill (No. 6) in 2007. The bill proposed to raise the upper age limit of the Act to include 17 year olds, implementing the CRC’s previous recommendations in this regard. However, the bill has not yet been passed into law and there are indications that the current government intends not to proceed with this amendment.
  3. A new bill, the Children, Young Persons and their Families (Youth Court Jurisdiction) Bill has recently been introduced, which would make 12 and 13 year olds liable for prosecution in the Youth Court for serious offences. The bill would effectively lower the age of criminal prosecution for serious offences.
  4. The bill also provides for a number of new and/or expanded orders that may be imposed by the Youth Court. These include military-style camp programmes, which have come to be referred to as ‘boot camps’ and have attracted criticism in light of evidence as to the limited effectiveness of such programmes and concern that they represent a move towards a more punitive approach to dealing with young offenders.
  5. **The Commission considers that the current youth justice system provides a good framework for dealing with youth offending, and that despite apparent heightened public concern about its prevalence, youth offending rates have remained relatively stable over recent years. Research shows that early intervention, wrap around services, and restorative approaches are more likely to effectively address offending by young people and should remain the focus of New Zealand’s youth justice system.[[37]](#footnote-37)**
  6. A longstanding issue has been the detention of young people in police cells on occasions where placements in youth facilities are unavailable. The Commission acknowledges efforts that have been made to address this issue and the increased availability of places in Child, Youth and Family facilities. The Children’s Commissioner has worked with Child, Youth and Family and the Police in relation to the issue, and has noted a decline in the number and duration of detentions of young people in police cells.
  7. As in the case of adults in detention, there is an ongoing need to ensure that capacity pressures on facilities do not result in more young people being detained in inadequate or inappropriate facilities (such as police cells).
  8. The Commission acknowledges recent work to review New Zealand’s reservations to UNCROC in relation to age mixing in detention, and believes that withdrawal of this reservation should be undertaken as a priority.
  9. The Commission notes the importance of the independent monitoring and oversight provided by the Children’s Commissioner in respect of Child, Youth and Family; and that of the Ombudsmen.

## Electro-convulsive Treatment (ECT)

* 1. The Human Rights Commission and Health and Disability Commissioner made extensive submissions to a Parliamentary Committee’s examination of the issue of ECT. Both Commissions were of the view that ECT should not be used for children and never used without informed consent in other cases unless it is the only option.
  2. The Commission has welcomed the fact that, following the report of the Parliamentary Committee, annual reports on the use of ECT are now published, but was disappointed that the government response did not go further, for example in relation to the use of ECT on children.

# Immigration (Article 3)

## Immigration Act Review

* 1. A review of the Immigration Act was undertaken in 2006-07 and new legislation introduced in 2007.
  2. A comprehensive consultation process led to some positive changes being made to the Immigration Bill, including incorporation of the non-refoulement provisions of Article 3. However, the some serious deficiencies remain, including: the special advocate mechanism that applies to people deemed to be a security risk; the lack of an explicit presumption in the bill against detaining children and young people; and the continuation of a proscription against the Human Rights Commission becoming involved in matters relating to immigration.[[38]](#footnote-38)
  3. The practice of interdiction has meant fewer asylum seekers reach New Zealand and those that do are automatically detained. People refused residency can be detained for lengthy periods if they refuse to sign papers permitting them to be deported.
  4. **The Commission recommends that the Government review immigration legislation to ensure it is fully compliant with human rights standards, and removes the proscription against the Human Rights Commission becoming involved in immigration matters.**

## The *Zaoui* Case

* 1. As outlined in the State report, following a number of court proceedings concerning the issuing of a security risk certificate against him and his consequent detention, Mr Zaoui was released on bail in 2004, having been detained since his arrival in New Zealand two years earlier.
  2. The Commission appeared as intervenor in the *Zaoui* case and made submissions to both the Court of Appeal and Supreme Court emphasising the relevance of human rights standards and natural justice in reviewing the security risk certificate issued against Mr Zaoui.
  3. Notable aspects of the Supreme Court’s rulings in 2005[[39]](#footnote-39) included that the Inspector General is not required to consider the possible risks of torture or ill treatment upon deportation, but that the Minister of Immigration is required to do so in accordance with the non-refoulement obligations of the Convention. The decision confirmed that Article 33(2) of the Refugee Convention is relevant to the Inspector General’s decision and that there is a very high threshold for deciding whether a person presents a risk to security in this situation. The Court also confirmed that the Minister is required to give reasons for confirming the certificate, and that the principles of natural justice apply.
  4. In 2007 the security risk certificate was reviewed and revoked by the Director of Security Intelligence. The review was conducted with the involvement of a special advocate, who was able to access classified information and make submissions in Mr Zaoui’s interests.
  5. **The Commission remains concerned that, although there is provision for a special advocate system in the proposed Immigration Bill, the use of and access to classified information remains problematic – including the prohibition of communication between special advocate and subject after the advocate has seen the classified information. The bill also provides for access to a summary of allegations, but not a summary of the information on which allegations are based.**

# Education and training (Article 10)

* 1. In recent years, the Commission has provided ‘train the trainers’ human rights education programmes to Police, Customs, and Corrections staff, and has been working with a newly formed Police Human Rights working group on a more comprehensive approach to the application of human rights principles in all Police practice.
  2. **While some training and guidelines are in place for law enforcement and detention personnel, a number of staffing and practice issues raised above highlight the importance of comprehensive integration of human rights into training and day to day practices.**

# Review of legislation, policy and practice in relation to people subject to arrest, detention or imprisonment (Article 11)

* 1. Reviews of legislation relating to Police, Corrections and Immigration have been outlined above. Ongoing monitoring and review in these areas remains important. The Commission considers that further review of the Immigration legislation in particular is necessary in order to ensure that human rights standards are met.
  2. The Committee should also be aware that pieces of recently introduced legislation, such as the Sentencing and Parole Reform Bill (2009) may have implications on New Zealand’s implementation of the Convention.[[40]](#footnote-40)
  3. The *New Zealand Action Plan for Human Rights* identified priorities for action from 2005-2010 in order to improve human rights in New Zealand. The Action Plan has been an important catalyst in increasing understanding of the value of human rights and greater consideration of human rights standards in state sector policy development. It has also provided a valuable framework for human rights advocacy by civil society.
  4. **The Commission is seeking the government’s support to develop, in consultation with all interested parties, a further national plan of action, for the promotion and protection of human rights in New Zealand, for 2010-2015.**

# Complaints of torture and access to redress (Articles 12, 13 and 14)

## The *Taunoa* Case

* 1. Further to the update provided in the State Report (pp 44-5), the Commission notes the following matters relating to the *Taunoa* case.
  2. In 2007 the Supreme Court, by majority, declined the appeals by Mr Taunoa and others that their treatment amounted to cruel, degrading, or disproportionately severe treatment in breach of s 9 of the New Zealand Bill of Rights Act 1990. [[41]](#footnote-41) The appeal ruling did not affect the earlier decisions of the High Court and Court of Appeal that the Behaviour Management Regime that had operated at Auckland Prison between 1998 and 2004, breached the prisoners’ right to be treated with humanity and respect for their inherent dignity (affirmed by s 23(5) of the Bill of Rights Act).  The Supreme Court did however, allow cross-appeals by the Attorney-General against the level of damages awarded to three of the prisoners for breach of s 23(5).
  3. The Commission notes that the original award of damages to the prisoners in 2004 met with significant public and political objection. This in turn prompted the enactment of the Prisoners’ and Victims’ Claims Act 2005, which limits the award and payment of compensation to prisoners. The Commission considers that this response inappropriately focused on limiting prisoners’ access to compensation, rather than on preventing mistreatment from occurring, and does not accord well with the State’s obligations to ensure that prisoners are treated with humanity and dignity and that an effective remedy is available for violations of their rights.
  4. The Act provides that any compensation awarded to prisoners may be subject to reparation claims by any victim of their offending before being paid to the prisoner. While victims of crime should be appropriately compensated, the Commission does not consider that the legislation provides a suitable way of doing so, since it effectively depends on the prisoner’s rights being breached, and on the prisoner then making a claim for compensation knowing that they are unlikely to receive the benefit of it. A ‘sunset clause’ limiting the duration of the Act’s provisions has been extended to delay their expiration until 2010.

## Services for victims

* 1. The Commission welcomes a number of other initiatives to address victims’ rights, including the development of a Victims’ Charter; increased funding for Victim Support groups; and reviews that are underway in relation to services and compensation for victims of crime.
  2. **While efforts have been made to improve recognition of victims’ rights, the Commission believes that these rights should be further strengthened, particularly in relation to participation in the criminal justice system and access to compensation.**

## Access to redress

* 1. An issue that has come to the Commission’s notice concerns claims being brought by upwards of 500 claimants in respect of alleged abuse in Social Welfare homes and other State institutions during the 1970s, 1980s and earlier. Claimants report that their attempts to seek redress have been hindered by the government, which is contesting the claims. Having tried and been unable to resolve the claims through an out-of-court process, the claimants face further difficulties arising from the withdrawal of legal aid funding for historic abuse cases by the Legal Services Agency.
  2. **A suitable process is needed for the resolution of claims relating to historical allegations of abuse in State care.**

1. Human Rights Commission. (September 2004). *Human Rights in New Zealand Today: Nga Tika Tangata O Te Motu*. Wellington: Human Rights Commission. Available at: <http://www.hrc.co.nz/report/> [↑](#footnote-ref-1)
2. Human Rights Commission. (March 2005). *The New Zealand Action Plan for Human Rights: Mana ki te Tangata*. Wellington: Human Rights Commission. Available at: <http://www.hrc.co.nz/report/actionplan/0foreword.html> [↑](#footnote-ref-2)
3. New Zealand Police. (February 2008). *Operational Evaluation of the New Zealand Taser Trial*. Wellington: New Zealand Police. [↑](#footnote-ref-3)
4. For example: Auckland District Law Society Public Issues Committee. (14 December 2007). *Think Twice about Tasers.*

   Campaign Against the Taser. (December 2007). *Stun guns in Aotearoa New Zealand?* <http://www.converge.org.nz/pma/tasertrial.pdf> (accessed on 20 March 2009). [↑](#footnote-ref-4)
5. Supra note 3, at pp 14, 63, 65-70. [↑](#footnote-ref-5)
6. Ibid. at pp14, 65 [↑](#footnote-ref-6)
7. Campaign Against the Taser, supra note 4, at pp 7-11. [↑](#footnote-ref-7)
8. Supra note 3, at pp 16, 94-95. [↑](#footnote-ref-8)
9. <http://www.police.govt.nz/resources/2006/taser-trial/download-taser-reports.html> [↑](#footnote-ref-9)
10. United Nations Human Rights Committee. (2002). *Concluding Observations of the Human Rights Committee: New Zealand,* CCPR/CO/75/NZL, at para 13. [↑](#footnote-ref-10)
11. At paragraphs 3.67-3.70 [↑](#footnote-ref-11)
12. Office of the Ombudsmen. (December 2005). *Ombudsmen’s Investigation of the Department of Corrections in relation to the Detention and Treatment of Prisoners*. Wellington: Office of the Ombudsmen. [↑](#footnote-ref-12)
13. Department of Corrections. (November 2008). *Briefing for the Incoming Minister.*  Wellington: Department of Corrections. [↑](#footnote-ref-13)
14. Office of the Ombudsmen. (June 2007). *Ombudsmen’s Investigation of the Department of Corrections in relation to the Transport of Prisoners.* Wellington: Office of the Ombudsmen. [↑](#footnote-ref-14)
15. Supra, note 15; and press releases available on the Department’s website at: [http://www.corrections.govt.nz/index.html](http://www.corrections.govt.nz). [↑](#footnote-ref-15)
16. Office of the Ombudsmen. (2008). *Annual Report 2007/2008*. Wellington: Office of the Ombudsmen. p 19.

    The Commission notes that in their 2007 report on prisoner transport the Ombudsmen had expressed concern and the practice of automatic handcuffing of prisoners, and had noted (supra, note 14, at p 66):

    If the Department is concerned that Chubb is unable to carry prisoners as safely and securely as itself, the remedy is to deal with the cause of that. The remedy is not to penalise all prisoners by handcuffing, irrespective of whether individual prisoners merit it or not.

    The handcuffing of all prisoners in vehicles should not be an automatic practice. Handcuffing is uncomfortable for the prisoner, and diminishes safety in the event of traffic accident. Handcuffs should only be used if, following the exercise of active discretion, it is considered there is good reason in the case of that particular prisoner. [↑](#footnote-ref-16)
17. Office of the Ombudsmen. (November 2007). *Investigation into Issues involving the Criminal Justice Sector.* Wellington: Office of the Ombudsmen. p 88. [↑](#footnote-ref-17)
18. Supra note 17, p 8.

    ‘Inmates affected by mental illness’, *The Press*, 6 June 2008. <http://www.stuff.co.nz/national/475761> (accessed on 20 March 2009) [↑](#footnote-ref-18)
19. Controller and Auditor General. (March 2008). *Mental Health Services for Prisoners.* Wellington: Officer of the Auditor General. [↑](#footnote-ref-19)
20. Ibid. [↑](#footnote-ref-20)
21. Supra note 17, p 9, citing comments made by Sandy Simpson, Honorary Clinical Associate Professor and Clinical Director at the Mason Clinic, in an article published in *Rethinking Crime and Punishment: Newsletter No 35*, April 2008. [↑](#footnote-ref-21)
22. Ibid. p 9. [↑](#footnote-ref-22)
23. Human Rights Commission. (2007). *To Be Who I Am / Kia noho au ki tōku anō ao*. Auckland: Human Rights Commission [↑](#footnote-ref-23)
24. Department of Corrections. (September 2007). *Over-representation of Māori in the criminal justice system: An exploratory report*. Wellington: Department of Corrections. At p 6 [↑](#footnote-ref-24)
25. Ibid. at p 39 [↑](#footnote-ref-25)
26. Ibid. p 39 [↑](#footnote-ref-26)
27. Supra, note 17. [↑](#footnote-ref-27)
28. Department of Corrections. Supra, note 14 at p22 [↑](#footnote-ref-28)
29. Ibid. p 11 [↑](#footnote-ref-29)
30. These include the Sentencing and Parole Reform Bill (2009), which would provide for a "three strikes" system whereby an automatic life sentence without parole is imposed upon conviction for a third serious offence for persons who have previously received a sentence of five years or more. [↑](#footnote-ref-30)
31. Inmates faced with two in a cell, *NZ Herald*, 10 March 2009. Retrieved on 20 March 2009 from: <http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10560800>. [↑](#footnote-ref-31)
32. Department of Corrections, supra note 14, p 24. [↑](#footnote-ref-32)
33. Supra, note 11, at para 13. [↑](#footnote-ref-33)
34. ‘Unions fight plan ‘blinded by ideology’’, *New Zealand Herald*, 10 March 2009.

    Public Service Association, Press release 9 March 2009: *Private prisons cost more and provide worse service,* [http://www.psa.org.nz](http://www.psa.org.nz/newsroom/mediareleases/09-03-09/Private_prisons_cost_more_and_provide_worse_service.aspx). [↑](#footnote-ref-34)
35. Children’s Commissioner. (November 2008). *Omnibus Survey Report - One year on: Public attitudes and New Zealand’s child discipline law*. [↑](#footnote-ref-35)
36. United Nations Committee on the Rights of the Child. (2003). *Concluding Observations of the Committee on the Rights of the Child: New Zealand*. CRC/C/15/Add.216. Para 20-21. [↑](#footnote-ref-36)
37. For example see: McLaren, K L,. (2000). *Tough Is Not Enough – Getting Smart About Youth Crime*. Wellington: Ministry of Youth Affairs. [↑](#footnote-ref-37)
38. Clause 350 Immigration Bill 2007 (replicating the present s.149D Immigration Act 1987). [↑](#footnote-ref-38)
39. *Attorney General v Zaoui* [2005] NZSC 38 [↑](#footnote-ref-39)
40. Supra, note 30. [↑](#footnote-ref-40)
41. *Hapimana, Taunoa & Ors v Attorney General* [2007] NZSC 70 [↑](#footnote-ref-41)