



17 May 2006

S06.18

**Submission to the Foreign Affairs, Defence and Trade Select Committee
on the Crimes of Torture Amendment Bill**

The National Council of Women of New Zealand (NCWNZ) is an umbrella organisation representing 38 nationally organised societies. It has 32 branches throughout the country attended by representatives of those societies and some 150 other societies. The Council's functions are to serve women, the family and the community, at local, national and international levels through research, study, discussion and action.

This submission has been prepared by the Justice and Law Reform Standing Committee, following wide consultation with NCWNZ members.

NCWNZ has no specific policy on torture but abhors all kinds of violence and degrading treatment. NCWNZ has supported United Nations resolutions on such matters. Members give support to ratify this amendment so that New Zealand retains its reputation as a country that has strong and unfaltering commitment to human rights, and to meeting its international obligations under the Optional Protocol.

The general expression of the membership was in favour of this Amendment to the Crimes of Torture Act, 1989. It was also pointed out that under **9. Right not to be subjected to torture or cruel treatment**, the New Zealand Bill of Rights Act 1990 states that:

"Everyone has the right not to be subjected to torture or to cruel, degrading, or disproportionately severe treatment or punishment."

The present Amendment, by making recommendations for improvements and establishing a continuing dialogue with appropriate authorities, will develop an international understanding with United Nations. The Optional Protocol was adopted by United Nations on 18 December 2002 and signed by New Zealand on 24 September 2004.

Specific Comments

Part 2
Prevention of Crimes of Torture
Preliminary provisions

16 Interpretation

National Preventive Mechanism means 1 or more of the following that may, for the time being, be designated under **section 26** as a National Preventive Mechanism:

- (a) an Ombudsman holding office under the Act 1975 including, for the purpose of this Act, any person holding office under an Ombudsman to whom many of the powers of an Ombudsman have been delegated under section 28 of the Ombudsman Act 1975:
- (b) the Police Complaints Authority:
- (c) the Children's Commissioner:





- (d) persons designated by the Director-General under section 32 of the Health and Disability Services(Safety) Act 2001 to audit the provision of health care services:
- (e) visiting officers appointed in accordance with relevant Defence Force Orders issued pursuant to sections 175 and 206 of the Armed Forces Discipline Act 1971:
- (f) any other person, body or agency that is designated a National Preventive Mechanism.

Members from NCWNZ branches suggested several more groups operating in New Zealand that are reputable international or national agencies e.g. Red Cross, Amnesty International, Refugee & Migrant Services, Council for Civil Liberties, Prison Chaplaincy Service, Prisoners Aid, Victim Support. Representatives of these could also be considered for inclusion as a National Preventive Mechanism in accordance with 16 (f). Members supported the allocation of one representative to be from a Community organization.

16 Interpretation

place of detention means any place under the jurisdiction and control of the Crown where persons are or may be deprived of their liberty, for example or custody in -

- (a) a prison:
- (b) a police cell:
- (c) a court cell:
- (d) a hospital:
- (e) a secure facility as defined in section 9(2) of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003:
- (f) a residence established under section 364 of the Children, Young Persons, and Their Families Act 1989:
- (g) premises approved under the Immigration Act 1987:
- (h) a service penal establishment as defined in section 2 of the Armed Forces Discipline Act 1971.

Comments from NCWNZ members on the above places of detention considered that these were not quite broad enough and pointed out that cruelty, inhumane, degrading or punishing behaviour does not only occur in places where people are detained but in individual homes, schools and other societal gatherings. Emotional cruelty and abuse should be investigated as well as physical cruelty and abuse. When an offender is sentenced to Home Detention the person's home comes under the Corrections Department and then becomes a place of detention. Therefore, any monitoring by a National Preventive Mechanism would necessitate entry and access to a private home and may involve non-convicted occupants of the dwelling.

National Preventive Mechanisms

27 Functions of National Preventive Mechanism

A National Preventive Mechanism has the following functions under this Act in respect of the places of detention for which it is designated:

- (a) to examine, at regular intervals -
 - (i) the conditions of detention applying to detainees;
 - and
 - (ii) the treatment of detainees:
- (b) to make any recommendations it considers appropriate to the person in charge of a place of detention -
 - (i) for improving conditions of detention applying to detainees:
 - (ii) for improving the treatment of detainees:
 - (iii) for preventing torture and other cruel, inhuman or degrading treatment or punishment in places of detention:



- (c) to provide at least 1 written report to the Minister each year on the exercise of its functions under this Act during the year to which the report relates, and to provide a copy of each report to the Central National Preventive Mechanism (if designated).

Comments from NCWNZ members on this section were concerned that if this National Preventive Mechanism was to report only once a year there should be some way of communicating any serious concerns immediately to the Minister.

General Comments

National Council of Women of New Zealand in its 110 years of operation has always been interested in all legislation which affects women, children and families, and is likely to continue to comment on legislation coming forward for comment.

In replying to questions asked regarding this Bill, members raised more issues requiring clarification. They questioned whether -

- the Justice system, via a court case, would be the appropriate venue to resolve any problems of 'degrading treatment'.
- the appointment of National Preventive Mechanisms would identify the problem before legal action and compensation arises.
- the Ministry of Justice would employ and pay members of sub committees. If so, they questioned their independence - paid by Government to investigate Government Agencies.

These concerns were relevant to this Optional Protocol, and NCWNZ is optimistic that there will be answers to these in the future.

Conclusion

Of those who responded to the NCWNZ Action Item, the general consensus has been approval of the Amendment Bill when taken in conjunction with the other Acts to be amended.

National Council of Women of New Zealand will support the Crimes of Torture Amendment Bill so that New Zealand will comply with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Optional Protocol) set by United Nations.

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