



Monitoring Places of Detention



Annual report of activities under
the Optional Protocol to the
Convention against Torture (OPCAT)

1 July 2009 to 30 June 2010



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Contents

Foreword	2
Introduction	4
Human Rights Commission	5
Independent Police Conduct Authority	7
Ombudsmen	13
Children's Commissioner	18
Inspector of Service Penal Establishments	21
Summary of emerging issues	23
Appendices	26
Appendix 1: OPCAT background	26
Appendix 2: Human rights standards	29
Appendix 3: Monitoring standards framework	30
Appendix 4: Optional Protocol to the Convention against Torture	35
Appendix 5: Part 2, Crimes of Torture Act 1989	43

Foreword

It is just three years since New Zealand established “a system of regular visits” to places where people are detained, “in order to prevent torture and other cruel, inhuman or degrading treatment or punishment”. To implement the Optional Protocol to the Convention against Torture (OPCAT), the Crimes of Torture Act 1989 was amended to provide for a Central Preventive Mechanism and four National Preventive Mechanisms: the Human Rights Commission, the Children’s Commissioner, the Inspector of Service Penal Establishments, the Independent Police Conduct Authority and the Ombudsmen.

Preventive monitoring is already having an impact on the conditions under which children and young people, men and women are being detained in New Zealand. Each of the Preventive Mechanisms records examples of practical improvements that have been achieved this year as a result of their visits.

These have included agreement to:

- cease use of a substandard facility
- upgrade a substandard facility to meet minimum health and safety standards
- alter an exercise area to allow improved access to the outdoors
- reduce lockdown hours
- provide children and young people with a say in how residences could be improved
- further strengthen the current system relating to convicted offenders subject to hybrid orders involving both a sentence of imprisonment and compulsory treatment, to assure their access to the Parole Board.

A high level of cooperation by the detaining agencies and willingness to engage with the Preventive Mechanisms has been a consistent feature of the OPCAT experience. This year there has been an increase in referrals from staff, who recognise the benefits and potential of the OPCAT mechanism to improve conditions, eliminate risks and prevent harm.

There has also been greater engagement with civil society and community organisations, extending beyond the national to the local and regional levels.

The processes and practice of the New Zealand OPCAT organisations continue to evolve. The report reflects a strong commitment to developing high quality procedures and working to achieve best practice despite significant resource constraints. Increased sharing of experience and expertise amongst the Preventive Mechanisms is proving particularly valuable as is the practice of drawing on staff from other Preventive Mechanisms to participate in monitoring visits.

Internationally, there is considerable interest in the New Zealand multiple-mechanism approach to the implementation of OPCAT. However, resource constraints, commented on in this report by three of the National Preventive Mechanisms, remain a significant barrier to visits to all places of detention on a sufficiently regular basis.

This report identifies a number of cross-cutting issues that require attention in the year ahead:

- Physical conditions in older facilities – the findings of OPCAT visits have highlighted inadequate conditions in some of the country’s older facilities in particular, and the need for substantial investment in order to bring these to standard.
- Use of restraints – any use of force, personal searches, or use of mechanical restraints represents a significant interference with individual rights and freedoms. Accordingly, human rights standards require stringent safeguards and restrictions around their use. OPCAT visit findings have highlighted some issues around the legislative basis, policies and practices that cover use of restraints and searches of people in detention.
- Health issues – adequate provision of health services, including mental health services, is critical given the high health needs of many people in detention.

Focused research and evaluation is a preventive measure under OPCAT. As a first initiative, the Children’s Commissioner and the Independent Police Conduct Authority have agreed to undertake a joint thematic review of the treatment of and issues affecting children and young people detained in New Zealand Police custody.

Agencies in New Zealand with the power to detain people generally comply with their obligations under the Convention against Torture. What this report reveals, however, is the value of the OPCAT process and its human rights framework, both in identifying issues and situations that are otherwise overlooked, and in providing authoritative assessments of whether new developments and specific initiatives will meet the international standards for safe and humane detention.



Rosslyn Noonan
 Chief Commissioner – Te Amokapua
 Human Rights Commission – Te Kāhui Tika Tangata
 Central National Preventive Mechanism

Introduction

This collated annual report brings together the reports of the five designated OPCAT organisations: the Human Rights Commission, Independent Police Conduct Authority, Ombudsmen, Children’s Commissioner, and Inspector of Service Penal Establishments. This is the third such report and covers the period from 1 July 2009 to 30 June 2010. It provides a summary of activities undertaken during the 2009-10 year, as well as observations and key issues that have emerged.

OPCAT

The OPCAT system, which involves monitoring places of detention by independent bodies, aims to help States meet their obligations to prevent torture and ill treatment of people who are deprived of their liberty.

New Zealand became a party to OPCAT in March 2007, following the enactment of amendments to the [Crimes of Torture Act 1989](#) to provide for visits by the international and domestic monitoring bodies.

The designated National Preventive Mechanisms (NPMs) are:

- the [Office of the Ombudsmen](#) – in relation to prisons; immigration detention facilities; health and disability places of detention; and Child, Youth and Family residences
- the [Independent Police Conduct Authority](#) – in relation to people held in police cells and otherwise in the custody of the police
- the [Office of the Children’s Commissioner](#) – in relation to children and young persons in Child, Youth and Family residences
- the Inspector of Service Penal Establishments of the Office of the Judge Advocate General – in relation to Defence Force Service Custody and Service Corrective Establishments

- the [Human Rights Commission](#) has a coordination role as the designated central NPM.

The NPMs are empowered under OPCAT to regularly visit places of detention, and make recommendations aimed at strengthening protections, improving treatment and conditions, and preventing torture or ill treatment. The Central NPM’s role includes coordination and liaison with NPMs, addressing systemic issues, and liaising with the international UN Subcommittee on Prevention of Torture.

The international OPCAT monitoring body, the [UN Subcommittee on Prevention of Torture](#), will periodically visit each State party to inspect places of detention and make recommendations to the State.

Human Rights Commission

The Human Rights Commission has been designated as the Central National Preventive Mechanism, which entails coordination and liaison with NPMs, identifying systemic issues, and liaising with the UN Subcommittee.

The Commission is an independent Crown entity with a wide range of functions under the [Human Rights Act 1993](#). One of the Commission's primary functions is to advocate and promote respect for, and an understanding and appreciation of, human rights in New Zealand society.

The Commission's functions may be undertaken through a range of activities, including advocacy, coordination of human rights programmes and activities, carrying out inquiries, making public statements, and reporting to the Prime Minister on any matter affecting human rights. This includes the desirability of legislative, administrative or other action to better protect human rights. The Commission also administers a disputes resolution process for complaints about unlawful discrimination.

Commissioners are appointed by the Governor-General, on the advice of the Minister of Justice, for a term of up to five years.

SUMMARY OF ACTIVITIES

In its role as the Central National Preventive Mechanism, the Human Rights Commission continued to liaise with NPMs, and hosted three round table meetings of the OPCAT organisations. At the meetings, there is a focus on strengthening professional practice by discussing experiences and challenges as they arise.

With the support of the Asia Pacific Forum (APF) of national human rights institutions and the international Association for the Prevention of Torture (APT), the Commission was able to bring two experts to New Zealand for a workshop with the NPMs. It provided a valuable opportunity to draw on overseas experiences and to consider expert perspectives on the way the New Zealand Preventive Mechanisms were working. The experts also met with government agencies to discuss developments to date and share their assessment of desirable changes and priorities for future development.

A series of meetings between the NPMs and members of civil society were held to provide information and raise awareness of OPCAT and to identify and discuss issues of concern to NGOs. Civil society and NGO engagement is vital to the effectiveness of the OPCAT process and, in particular, informs the decisions about prioritisation of visits.

Raising awareness of OPCAT and the human rights standards relating to detention was the focus of a workshop with prison managers, undertaken in collaboration with the Ombudsmen's Office, Ministry of Justice and the Department of Corrections. The workshop provided an overview of the human rights framework and explored how Corrections staff could apply a human rights approach to their work.

The New Zealand model of "multiple mechanisms" with a central coordinating body is continuing to create interest internationally. The Commission was asked to provide a representative to take part in OPCAT symposia in Tokyo, Seoul and in Sydney as part of those governments' consideration of OPCAT ratification.

GOING FORWARD

The Commission will work with NPMs to identify systemic issues affecting the rights of people in detention. Issues identified this year are discussed in the Emerging issues section of this report. In the coming year, the Commission will review, in particular, the use of restraints and searches of people in detention, and work with the NPMs and relevant agencies to identify what changes, if any, are required.

The Commission will also continue to participate in joint activities with the other NPMs, including in monitoring visits and on the joint thematic review of children and young people in police detention.

Independent Police Conduct Authority

The Independent Police Conduct Authority (IPCA) is the designated NPM in relation to people held in police cells and otherwise in the custody of the police.

The IPCA is an independent Crown entity, which exists to ensure and maintain public confidence in the New Zealand Police. The IPCA does this by considering and, if it deems it necessary, investigating public complaints against police of alleged misconduct or neglect of duty and assessing police compliance with relevant policies, procedures and practices in these instances.

The IPCA also receives from the Commissioner of Police notification of all incidents involving police where death or serious bodily harm has occurred. The IPCA may undertake an investigation of its own motion, where it is satisfied there are reasonable grounds in the public interest, any incident involving death or serious bodily harm.

The IPCA evolved from the Police Complaints Authority, which was established in 1988. The Independent Police Conduct Authority Act 2007 marked a major shift in the direction of the Authority. This started with its name change and the change in the body of the Authority from an individual to a board of up to five members, comprising both legal experts and lay people.¹

Justice Lowell Goddard is chairperson of IPCA and was appointed as the Police Complaints Authority in February 2007.

CONTEXT

There are nearly 800 police cells in New Zealand, of which nearly 600 are overnight cells. Thirty three police stations are open 24 hours a day.

SUMMARY OF ACTIVITIES

Internal review

In January 2010, the IPCA conducted a comprehensive internal review of OCPAT systems and procedures. As a result of this review, the Authority appointed an OCPAT coordinator and specialist staff to carry out site visits and analysis. A strategy for liaison between the Authority and police was agreed upon and a Memorandum of Understanding between the Authority and the Children's Commissioner was established. The Authority will continue to work on establishing a relationship agreement or formalised Memorandum of Understanding with police in respect of the Authority's OCPAT functions. Administrative management processes were streamlined and refined policy and procedure documents were created, including:

- policy and procedure protocol for OCPAT visits
- IPCA checklist for OCPAT visits
- reporting letter templates
- process work flow charts.

The Authority has developed its internal referral processes to capture OCPAT issues that arise in cases managed by the complaints management and reviewing teams. A triage process had been established, whereby all incoming files are assessed for OCPAT issues in accordance with a newly created OCPAT indicators checklist and tagged in the IPCA database with searchable keywords. A referral and regular meeting system has been established and a member of the complaints management team has been appointed to the OCPAT team to facilitate internal liaison with the OCPAT team. The Authority has also established a system for assessment of all current open files, as well as an OCPAT screening system, which is applied to all case files prior to closure.

¹ Independent Police Conduct Authority, Statement of Intent 2009–2012.

PERFORMANCE MEASURES

Having conducted an assessment of international performance measures for OPCAT, the Authority has developed nine new performance measures.² The Authority has also appointed a dedicated OPCAT team with extensive and diverse experience in investigative work and human rights law.

In terms of quantity performance measures, the Authority has undertaken to: inspect 30 detention facilities before 30 June 2011; meet on a monthly basis with the police OPCAT portfolio holder; and report to Parliament and the Human Rights Commission as provided for in sections 27(c)(ii) and 27(d) of the Crimes of Torture Act 1989. Quality performance measures will include: providing quarterly updates of OPCAT information on the Authority's website; conducting quarterly reviews of the police's implementation of Authority recommendations; interviewing at least one detainee at every site visit (and ensuring that such interviews are conducted with detainees of different ages, ethnicities, gender, and other factors); and holding monthly review and planning meetings with the Authority's complaints management and reviewing team staff. With regard to timeliness, the Authority has undertaken to: report findings and/or recommendations to NZ Police National Headquarters and District Commanders within 20 working days of the visit(s); seek solutions from police to issues raised in Authority findings and/or recommendations within two months of police district receipt of the Authority's visit report; and provide monthly briefing report to the Authority board in respect of site visits, recommendations status, issues and trends, and other projections.

VISITS

The Authority was successful in conducting its target number of site visits (30) for the 2009-10 reporting year. The same site visit target has been set for the 2010-11 reporting year. This will allow the Authority to adopt a qualitative, rather than quantitative, approach to OPCAT visits and to strengthen education and awareness initiatives and other developmental work that is central to the durability of OPCAT in New Zealand.

The Authority has ensured that its visits during the 2009-10 year captured both urban and rural sites. The Authority also conducted visits at different times of the day, including late nights and early morning visits. This approach will continue in the future, to ensure OPCAT assessments accurately reflect the various operational conditions under which police work, and that issues that arise in peak and off-peak times can be identified and analysed.

In order to move towards international best practice standards, over 10 per cent of visits during the 2009-10 reporting year were unannounced visits and half of those were also repeat visits. Unannounced and repeat visits ensure OPCAT inspections are, and are viewed as being, transparent and effective assessments of places of police detention in New Zealand. The Authority visits were very well received. Further unannounced visits will form part of the OPCAT team's annual site visit plan in the next reporting year.

The Authority has expanded its site visit methodology to include multi-agency specialist site visits in specific cases. In April 2010, the Authority responded to an acute case requiring immediate and specialist attention by engaging with other national organisations that had

² IPCA 2010/2011 Statement of Intent, pp. 23-25, accessible at <http://www.ipca.govt.nz/Site/publications/Default.aspx>.

expertise in the key areas of concern. This specialist visit was the first of its kind conducted by NPMs under OPCAT in New Zealand and resulted in immediate remedial work being undertaken by the NZ Police, the local District Council, the NZ Fire Service, and the Department of Labour. The visit was positively received; it facilitated a solution to issues that affected both staff and detainees and responded to conditions that had prevailed at this particular station for some time. The specialist site visit model, as developed by the Authority, is an important tool for cases that require immediate and effective action in the future. It allows the Authority to harness the specialist skills of practitioners and expedite resolution where individual action may be less effective.

In addition to the specialist site visit model, issues that can be raised and resolved through multi-agency dialogue, particularly in cases where jurisdictional overlap exists, can be facilitated and guided by the Authority. Sometimes, the treatment of individuals who are detained by or who are otherwise in the custody of police is affected by external frameworks and processes. Dialogue that acknowledges this interface and seeks to resolve operational issues in an open and progressive way is central to successful harm prevention initiatives under OPCAT. Accordingly, the Authority will utilise the opportunity for dialogue where it will be most effective in the upcoming reporting year.

REFERRALS

Since the March report, the Authority has received OPCAT referrals from external agencies, the police, and members of the public. The expansion of this referral system is important to ensure that when the Authority plans its site visit schedule under Article 20(e) of the Optional Protocol, it makes this assessment having considered a wide variety of facts and other relevant information.

The increase in referrals should not, at this stage, be interpreted as reflecting a higher or increasing number of OPCAT issues in places of police detention. Rather, referrals may be broadly indicative of an increasing awareness of OPCAT and the work of the Authority in New Zealand. Some referrals, particularly those from police, refer to general issues that can be resolved to improve conditions, eliminate risks and prevent harm.

Engagement

New Zealand Police

In March, the Authority contributed to the evaluation of the New Zealand Police/Ministry of Health Watch House Nurse Pilot Initiative. The two-year pilot started in 2008 and was undertaken in the Christchurch Central and Counties Manukau Police Stations. It involved the use of on-site nurses in watch houses to help police better manage risks associated with those who suffer from mental health problems, alcohol or other drug problems and, where appropriate, make referrals to treatment providers for affected detainees.

The Authority provided its observations on the benefits of this initiative, as well as an analysis of the international human rights law instruments and principles applicable to the treatment of detainees with drug and alcohol issues, and/or mental health needs. Overall, the Authority concluded:

The Authority endorses effective initiatives that enable custody centres to provide for the needs of detainees affected by mental illness, drugs, or alcohol-related issues. Such initiatives ensure that police are able to foster confident, safe and secure communities, and that New Zealand fulfils its international obligations under OPCAT [the Optional Protocol to the Convention against Torture] and other international human rights law instruments. The fundamental principle of OPCAT, which is a principle that also underpins

public health policy and healthcare in New Zealand, is prevention. Programmes such as the pilot initiative can, with appropriate planning and support, ensure that vulnerable members of our community are understood, respected and cared for when they need treatment the most: at the earliest possible opportunity, by qualified, committed police and specialised health practitioners.

The evaluation report concluded, inter alia, that while the evidence from the study could not conclusively indicate whether the initiative was reducing repeat detention rates, there was strong evidence to suggest that the initiative contributed to the expected outcomes of improved health status and reduced risk of harm to detainees with mental health and/or alcohol or drug issues. It identified numerous and significant benefits of the initiative for detainees, health service agencies and police.

In addition to contributing to specific projects such as the Watch House Nurse Pilot Initiative, the Authority's OPCAT team has facilitated regular meetings with the Police National Headquarters OPCAT portfolio holder and continues to engage on issues of national significance. As identified above, regular meetings with the police OPCAT portfolio holder has been identified by the Authority as a specific performance measure for the 2010-11 reporting year. The meetings have, and continue to, address a range of issues, including:

- the nature and scope of the Authority's OPCAT mandate
- suicide prevention and risk assessment procedures
- search policies
- care of individuals with special or specific needs or those who are at risk

- control and restraint policies, particularly in relation to vulnerable individuals
- number and quality of self-harm cells
- custodial staff training and induction (nationally and locally), and formal custody suite accreditation
- information available to detainees about their rights, how to make a complaint, and InfoLine or other translation and support services
- dialogue and operational relationship between police and the courts
- quantity and quality of CCTV cameras and data storage facilities
- availability and effectiveness of security screening equipment
- portable defibrillators and other health provision issues
- custody manuals and desk files, maintenance of prisoner movement books, and other recordkeeping processes
- building project plans
- evacuation policies.

This work is ongoing; it will continue to grow as the Authority develops its strategic direction framework and undertakes new development initiatives. The process has already seen positive outcomes, including the addition of keyword functions in the Police Electronic Custody Module (a software tool supplementing hard copy records in custody suites), which will allow authorised searches of detainees to be categorised, recorded and analysed.

NPMs

In April 2010, the IPCA and the Human Rights Commission facilitated a periodic NPM workshop focused on: a quality review of OPCAT monitoring checklists; plans for engagement; and methods of streamlining reporting, data

collection, recommendation implementation, and performance measures. All participants noted the value of the initiative and work on the agenda items will continue in the next reporting year.

The Authority has also participated in joint site visits with other NPMs. This approach enhances New Zealand's OPCAT work by ensuring that, in accordance with Article 18(2) of the Optional Protocol, NPM staff members are able to expand their scope of expertise and that site inspections are conducted by a number of practitioners with unique backgrounds and abilities. The Authority has concluded a Memorandum of Understanding with the Office of the Children's Commissioner and is working on the conclusion of a similar memorandum with the New Zealand Police. Whenever possible, the Authority meets with the Office of the Ombudsmen to discuss common areas of work and opportunities for further engagement. Collaboration efforts like this ensure New Zealand is matching work currently being undertaken by NPMs on the international stage.

Civil society

The importance of engagement with civil society was highlighted at the April NPM periodic workshop. The interface between NPMs and civil society and NGOs has also been highlighted by the Association for the Prevention of Torture in its 2006 report entitled *Establishment and Designation of National Preventive Mechanisms*. The association observes at page 70 that:³

...[NGOs] can be an excellent source of information for the NPM, to allow it to plan strategically its programme of in-depth visits and to react quickly to unanticipated situations with ad hoc visits. Such information can also assist the NPM to focus its visits to particular institutions on the facilities or issues that

are of the greatest concern. NGOs may also be an important source of information for the NPM in determining, between visits, the extent to which its recommendations are being implemented.

Through their advocacy or support work, NGOs may have earned a particularly high degree of trust on the part of detainees. Where such an NGO considers it appropriate, it could greatly enhance the effectiveness of the NPM by promoting awareness among the detainee population of the NPM's existence, any upcoming visits and its mandate and working methods, and by encouraging detainees to cooperate with and provide information to the NPM.

The Authority aims to integrate civil society meetings, as far as possible, into its regional site visit plans in the 2010-11 reporting year. The Authority has identified the value in engaging with individuals and groups, including: lawyers, including Legal Aid and Community Law Centre lawyers and advocates; social workers; detention advocacy groups and other human rights NGOs; health service practitioners, advocates, inspectors, and liaison staff; and other stakeholders who work at the operational and strategic levels.

Communications

Promoting awareness of OPCAT, as provided for in the fifth perambulatory paragraph of the Optional Protocol, is an important part of the IPCA's work.

The Authority has produced and is planning a national rollout of OPCAT fact sheets to be displayed in police custody suites. These fact sheets provide an easy-to-understand explanation of OPCAT, the IPCA's role, and key contact details.

3 Association for the Prevention of Torture (APT) *Establishment and Designation of National Preventive Mechanisms* (PCL Lausanne, Geneva, 2006).

To raise awareness among police, an article has been produced for the Police Association's Ten One magazine. The article draws staff attention to the fact sheets and provides key information about the IPCA's role, as well as the positive outcomes already achieved under the Optional Protocol in New Zealand.

The Authority will provide quarterly website updates on OPCAT activities and will continue to consider ways of strengthening public understanding of detention issues. In addition to website updates, the IPCA recognises the importance of creating awareness among individuals detained in police custody. Public awareness and communications efforts will continue in the 2010-11 reporting year.

GOING FORWARD

Joint thematic review – children and young people

The Authority is currently reviewing its strategic direction framework to identify cross-cutting issues under the OPCAT mandate. The Authority will conduct a joint thematic review (JTR) of the treatment of and issues affecting children and young people detained in police custody. This JTR will be conducted by the Authority and the Office of the Children's Commissioner. It is anticipated that the review will: examine national police and Child, Youth and Family policy on provision for children and young people in the custody of police; identify national and international standards applicable to the detention of children and young people; identify further assessment criteria that may be beneficial to NPM site visits; and establish appropriate recommendations for police and Child, Youth and Family to improve the quality and consistency of treatment of children and young people in police custody.

The review will be the first joint research and reporting effort by New Zealand NPMs under OPCAT. The research and evaluation framework established for the purpose of this review may be of use in future cases where joint reports are deemed necessary and appropriate. Further areas of research that may be beneficial, for example, include the incidents of death or serious injury of persons detained in police custody, the treatment of individuals with mental health needs, physical or intellectual disabilities, women, and individuals alleged to have committed specific offences that place them at risk. Focused and effective research and evaluation is a preventive measure under OPCAT that will receive the Authority's attention in the upcoming reporting year and beyond.

Reporting

The Authority monitors issues relating to vulnerable persons in custody. The Authority is currently reviewing the feasibility of gathering and analysing data of "near misses" (suicide or self-harm attempts) in police custody. The Authority will also review the use of mechanical restraints by police in light of OPCAT principles.

In the upcoming year, the Authority plans to expand the pre-site visit assessment by engaging with police to identify trends in respect of stations throughout the country. It is hoped that this will complement the existing internal assessment process undertaken by the Authority prior to site visits. The expansion of the assessment process may also highlight new areas that warrant attention by the Authority. The Authority will continue to work on developing its internal database to enable future analysis efforts.

Ombudsmen

The Ombudsmen have been designated as the NPM for prisons, immigration detention facilities, health and disability places of detention, and child and youth residences.

The Ombudsmen are independent Officers of Parliament, with wide statutory powers to investigate complaints against central and local government agencies. The functions and powers of the Ombudsmen are set out in several pieces of legislation, including the [Ombudsmen Act 1975](#).

The Ombudsmen's role includes providing an external and independent review process for individual prison inmates' grievances, as well as the ability to conduct investigations on their own motion.⁴

Ombudsmen, as Officers of Parliament, are responsible to Parliament but are independent of the government of the day. Ombudsmen are appointed by the Governor-General on the recommendation of the House of Representatives.

The following provides an overview of the Ombudsmen's work under the Crimes of Torture Act (COTA), and discusses in more detail issues arising in prisons and health and disability places of detention.

CONTEXT

Under COTA, the Ombudsmen are designated NPM with responsibility for monitoring and making recommendations to improve the conditions and treatment of detainees in prisons, immigration detention facilities, health and disability places of detention, child care

and protection residences, and youth justice residences. The Ombudsmen are assisted in carrying out this role by two inspectors, the second of whom was appointed in March 2010.

SUMMARY OF ACTIVITIES

The 2009-10 year saw the expansion and reinforcement of the Ombudsmen's NPM role as an independent monitor of humane treatment in places of detention. Regular inspection has had a demonstrable effect on the operation of secure facilities in all kinds of environments, and the treatment of detainees. This has been possible because of the specialist nature of the NPM's role, the expertise and commitment of its inspectors, and its human rights focus, methodology and values.

In 2009-10, the Ombudsmen visited or inspected 17 places of detention (the budgeted standard was 10-15). This included:

- eight men's prisons, one women's prison
- two mental health facilities
- one intellectual disability unit
- one youth unit (contained within a prison)
- one care and protection unit
- two District Court cells.

The Ombudsmen produced 10 inspection reports on:

- eight prisons
- one mental health facility
- one intellectual disability unit.

The inspection reports highlighted 100 findings, with 19 recommendations for improvement. Eighty one per cent of the Ombudsmen's findings, across all types of detention facilities, were positive, which is encouraging.

⁴ Section 13(3) of the Ombudsmen Act enables the Ombudsmen to instigate "own motion" investigations in the absence of a complaint being made. Recent own motion investigations include investigations into: the Department of Corrections in relation to the detention and treatment of prisoners (2005); prisoner transport (2007); and the Criminal Justice Sector (2007).

This brings the total number of scoping visits conducted to date to 97, and the total number of focused visits to 29.

Places of detention	Scoping visits
Immigration	2
Health and disability	75
Care and protection	1
Youth justice	1
Prisons	15
Court cells	3

Places of detention	Focused visits
Immigration	1
Health and disability	18
Prisons	10

The Ombudsmen are pleased to report that the inspectors continue to receive full cooperation from staff and management at the sites they visit. The feedback to date indicates the visits are seen as very worthwhile, and the inspectors are able to allay any misgivings or concerns and provide practical assistance in addressing issues relating to the humane treatment of detainees.

On a number of occasions, the Ombudsmen's inspectors have participated in or accompanied other NPMs on their visits to the places of detention they are responsible for. This included police cells and child care and protection residences. In return, other NPMs have accompanied the Ombudsmen on some of their scoping visits. These cooperative working arrangements ensure NPMs benefit from each others' experiences and broaden the knowledge

base across all the agencies. They also enable the Ombudsmen to take a multi-disciplinary approach to inspections, in line with international expectations, but within existing budgetary and staff constraints.

The inspectors continue to meet with civil society groups to raise awareness of COTA, and also meet regularly with officials from the Ministries of Health and Justice, the Department of Corrections, the New Zealand Parole Board and the Mental Health Commission. The inspectors also conducted presentations on COTA at the request of organisations such as the Department of Corrections and the Mental Health Foundation. These meetings and presentations are a valuable source of information about the facilities, and provide an opportunity to explain the Ombudsmen's role under COTA and clarify any issues or concerns.

In 2010-11, the inspectors are committed to carrying out 16 focused visits, five of which will be unannounced. The Ombudsmen had anticipated carrying out up to 50 visits but were unsuccessful in obtaining funding for a third inspector. Unannounced visits may occur outside normal business hours. District Health Boards and the Department of Corrections have been advised of this to ensure that the inspectors are not prevented from gaining access to any of the sites.

ISSUES

Prisons

Double bunking and use of modified shipping containers as cells

In May 2009, the United Nations Committee against Torture asked to be updated in relation to measures taken to reduce overcrowding and improve conditions of detention in New

Zealand prisons. In June 2009, the Department of Corrections confirmed its plan to permanently increase total capacity by 886 beds at its four newest facilities through use of double bunking. The facilities identified were:

- Spring Hill Corrections Facility (368 additional beds)
- Auckland Women's Regional Corrections Facility (170 additional beds)
- Northland Corrections Facility (198 additional beds)
- Otago Corrections Facility (150 additional beds)

A further 60 beds were added at Rimutaka Prison in June 2010. The new unit was constructed from modified shipping containers.

In light of the potential human rights implications of increased double bunking, and housing prisoners in converted shipping containers, the Ombudsmen instructed the COTA inspectors to visit each of the sites. This was to ensure the necessary processes and procedures were in place to minimise any issues around the management of prisoners, and their safety, security, dignity and privacy. The inspectors also reported on whether the new facilities contained the mandatory items and features required of new cells, as set out in Part A Schedule 3 of the Corrections Regulations 2005. At the time of the visit, the cells were unoccupied.

Double bunking is not a new concept in New Zealand prisons. The purpose of the visits was to inspect only those facilities that had fitted an additional bed to what was initially designed as a single cell.

The Department of Corrections has introduced a comprehensive assessment tool called Shared

Accommodation Cell Risk Assessment (SACRA) to establish prisoner compatibility when double bunking is used. If properly implemented, this process will alleviate many of the concerns surrounding double bunking, including prisoner safety.

All four prisons have been able to secure varying degrees of employment and purposeful activity to occupy prisoners' time in a constructive manner. Furthermore, all four sites have acquired extra exercise yards/sports facilities on the units affected by double bunking. Prisoners will not be required to eat their meals in their cells as dining facilities are more than adequate in all the units.

The Ombudsmen's inspection of the new container cells found they met the requirements in the Corrections Regulations 2005.

On the basis of the inspections, the Ombudsmen have no immediate concerns regarding the proposed management of the affected prisoners. It seems that appropriate measures are in place to protect their safety, security, dignity and privacy. However, further inspections will be carried out after the cells are occupied to ensure these measures operate effectively in practice.

The proposed no-smoking policy for prisons

The Government recently announced prisons will be going "smoke free" from 1 July 2011. In considering its options, Corrections stated that it focused on the social, economic and health costs of exposure to cigarette smoke and smoking itself. It determined that to be a good employer, and since it was the government department responsible for accommodating prisoners, it had an obligation to address the harm caused by tobacco.

The proposed policy means prisoners will no longer be allowed to smoke within the confines of a prison. While the Government had indicated that staff will be allowed to smoke in designated areas on prison property, Corrections has stated these areas will be outside of unit/prison fences and in a carefully considered area contingent on the size of the prison. The policy's primary intent is to improve staff and prisoner health and also to address the issue of non-smoking prisoners and staff taking legal action against Corrections for health problems that may arise from "second-hand smoke".

The Ombudsmen raised a number of concerns with Prison Services; in particular, that the policy might adversely impact on prisoners by leading to further reductions in unlock hours. Prison Services has advised these concerns will be monitored and addressed as the policy is implemented, and pragmatic solutions will be found for each site to protect prisoner and staff safety and prisoner entitlements.

New Plymouth Prison

New Plymouth Prison is New Zealand's oldest prison and manages a number of different categories of prisoners. This presents its own set of problems, given the archaic design of the facility and the requirements to provide safe, fair and humane containment. For example, the cells in the old part of the prison are particularly small and the installation of toilets exacerbated the problems around cell space.

The prison was the subject of a focused visit during the reporting year. The inspectors found that requiring prisoners to eat their meals in such close proximity to the toilets was unhygienic

and possibly amounted to inhuman or degrading treatment. They also found that the unlock hours in unit one, which averaged around two hours per day, were unreasonable, given the extremely small cell dimensions and the limited access to outdoor exercise facilities.

The Ombudsmen are pleased to report that the Department of Corrections has acted on these findings and prisoners can now take their meals in the dining room. The unlock hours for affected prisoners have been increased to a minimum of three and up to seven hours per day. The Department of Corrections has also agreed to investigate the division of the main exercise area into smaller yards to allow better use of the space available. The remedial action taken by the Department of Corrections largely resolves the Ombudsmen's concerns.

Health and disability places of detention

Potential cruel and inhuman treatment

Last year, the Ombudsmen reported on the case of a mental health care recipient kept in seclusion in an intellectual disability unit for what was considered to be an unreasonably long period. The matter was raised with the Chief Executive of the District Health Board and the Ombudsmen were advised that the care recipient would be transferred to a more suitable facility. During a follow-up visit, it was discovered that the care recipient had only recently been transferred – 13 months later than expected. While the issue is finally resolved, as far as the care recipient is concerned, the Ombudsmen now has processes in place to ensure remedial actions taken voluntarily or following a recommendation are implemented.

Criminal Procedure (Mentally Impaired Persons) Act 2003

The introduction of the Criminal Procedure (Mentally Impaired Persons) Act in 2003 allowed the court to sentence a convicted offender to a term of imprisonment while also ordering detention in hospital as a special patient. These orders are referred to as hybrid orders, because they combine aspects of compulsory treatment and imprisonment.

In the 2008-09 year, the Ombudsmen highlighted two cases where offenders subject to hybrid orders had not been given the opportunity to appear before the New Zealand Parole Board as soon as practicable following the completion of the non-parole period of their sentence. The reason for this related to inconsistencies in the electronic records kept by the courts, the Department of Corrections and subsequently the Parole Board.

Despite assurances that the problem had been rectified, the Ombudsmen have identified another offender recently convicted and subject to a hybrid order, who had not been properly “captured” electronically during this reporting period. Fortunately, the Ombudsmen were able to intervene and alert the appropriate agencies to the existence of the offender in the system.

From the Ombudsmen’s experience, it is evident there is still a significant problem with the electronic recording of information for offenders who are subject to a hybrid order when they are sentenced and processed through the courts. The Ombudsmen remain concerned that there may

be other offenders subject to these hybrid orders who have entered the system and not been “captured” correctly.

The Director of Mental Health has provided assurance that he is confident an interim measure to ensure the capture of data relating to these offenders, which will necessitate enlisting the cooperation of prisons and the District Health Boards, can be implemented. The Ombudsmen are advised that the Director remains committed to working with the other agencies to ensure accurate information is shared with those agencies, to facilitate fair treatment of people under hybrid orders.

Children's Commissioner

The Children's Commissioner is responsible for monitoring children and young persons in residences established under section 364 of the Children, Young Persons and their Families Act (CYPFA).

The Children's Commissioner is an independent Crown entity appointed by the Governor-General and operating under the Children's Commissioner Act 2003. The Commissioner has a range of statutory powers to promote the rights, health, welfare, and well-being of children and young people from 0 to 18 years.

The Office of the Children's Commissioner (the Office) monitors activities under the CYPFA, undertakes systemic advocacy functions and investigates particular issues with potential to threaten the health, safety, or well-being of children and young people.

The Children's Commissioner has joint responsibility with the Ombudsmen to monitor children and young people in residences established under section 364 of the CYPFA. In effect, the Office carries out residence visits and refers reports and findings to the Chief Ombudsman for input, including recommendations they wish to make.

The Commissioner's role as an NPM has some overlap with other statutory responsibilities to monitor the policies and practices of Child, Youth and Family. These responsibilities include visits to residences on a regular basis.

CONTEXT

Child, Youth and Family are responsible for eight residences⁵ for children and young people, established under s364 of the CYPFA. These include: four care and protection residences; three youth justice residences; and a specialist residence for young men who have displayed sexually inappropriate behaviour, the day-to-day running of which is undertaken by Barnardos.

A senior advisor from the Office has a particular responsibility to carry out NPM work at each of the residences on behalf of the Children's Commissioner.

SUMMARY OF ACTIVITIES

This year, the Office met regularly with the general manager at Child, Youth and Family responsible for residential care, keeping them informed of NPM processes, standards and the procedure for preventive monitoring.

A schedule of visits is established at the beginning of each year, ensuring each of the residences are visited once every two years. The Commissioner also has separate responsibilities to visit residences as part of his general monitoring role. Information gathered from the Commissioner's general monitoring visits can raise issues to be followed up at a later stage during NPM work. No unscheduled visits were done this year but the Office will be carrying out at least one in the coming year.

With only one staff member carrying out all NPM work, there is some risk that assumptions or perspectives will not be well tested. There is limited opportunity for creating checks and

⁵ During this financial year, a fourth youth justice facility has been built and will be included as part of the Children's Commissioner's NPM responsibilities during the next financial year.

balances and allowing for other perspectives on issues raised during visits. The Commissioner has mitigated against this by seeking out opportunities for collaborative work across NPM agencies. While the senior advisor leads all NPM visits, she is now often accompanied by an NPM inspector from another agency. This cross-fertilisation has been worthwhile, with benefits extending to better understanding of the role and improved procedures for collecting information, interviewing, analysis and reporting.

Before an NPM visit is done, the Office checks Child, Youth and Family's residential audit of compliance with the regulations and the quarterly grievance panel reports.

In the course of residence visits, the Office looks at:

- Treatment: identifying any incidents of torture, brutality or inhuman treatment, the use of isolation and/or of force and restraint
- Protection measures: provision of information such as complaint, inspection and disciplinary procedures, and how such incidents are recorded
- Material conditions: accommodation, lighting and ventilation, personal hygiene, sanitary facilities, clothing and bedding, and food
- Activities and access to others: contact with family and the outside world, outdoor exercise, education, leisure activities, and religion
- Health services: access to medical care
- Staff: conduct and training.

During the 2009-10 financial year, the Office undertook four inspections. The Office visited Puketai (Care and Protection) in August 2009;

Lower North (Youth Justice) in August 2009; Te Poutama Arahi Rangatahi (specialist residence) in February 2010; and Te Puna Wai o Tuhinapo (Youth Justice) in May 2010.

During the visits, there were discussions with children and young people, staff, management and the grievance panel. Each visit took three days and required extensive verification of processes to ensure children and young people are not exposed to torture, brutality or inhuman treatment. Following each visit, a comprehensive report was completed.

During the 2009-10 financial year, the Office also delivered training on children's rights to two groups of residential staff.

ISSUES

Within Child, Youth and Family residences, processes are in place to ensure that children and young people are not exposed to torture, brutality or inhuman treatment. Most of these processes are prescribed by the Children, Young Persons and Their Families (Residential Care) Regulations 1996 (the Regulations). Child, Youth and Family audits its own compliance against these regulations annually.

Child, Youth and Family, and Barnardos management have been helpful in facilitating access to the residential facilities, staff, residents and to written documentation. The reports have been well received, with recommendations promptly addressed and responded to.

The Office found that all residences have complied with their obligations under OPCAT to ensure children and young people are

not exposed to torture, brutality or inhuman treatment. However, a number of issues were identified as areas where improvements could be made. These were reported back to Child, Youth and Family, and Barnardos, who have given an assurance that each issue is being addressed. The Office will continue to monitor these during next year's visits.

Transition planning

For young people to move smoothly from residences to the community, residence and site staff need to be working together closely. The Office found this is not always happening. Child, Youth and Family's new therapeutic approach for residential care, which requires transition planning as a focus from the time of admission, should address this.

Suggestions for improvements

Children and young people have told the Office they want a say in how residences could be improved. Residences have installed suggestion boxes and are developing procedures to support their use.

Critical incidents

Residences report critical incidents, such as absconding or serious assaults, to Child, Youth and Family National Office and are not always receiving good quality responses and guidance. The Office has been advised this is now being addressed. Residential staff are supported by senior management, who are accessible 24 hours a day. The 2010-11 work programme includes examining processes for integrated incident reporting and formal feedback.

Residences and schools to work together

Child, Youth and Family have implemented a nationally approved Behaviour Management System. On-site school staff use a different model and this could lead to inconsistent treatment of young people. The Office has been assured that teachers are providing ratings and behavioural observations to residence staff and that goal-setting occurs in a multi-disciplinary team meeting.

GOING FORWARD

During 2010-11, the Office will continue to undertake all NPM visits, in conjunction with other NPM agencies, and complete reports. Four visits are planned for 2010-11 and at least one unannounced visit will be undertaken.

The Office will also take a focused look at policies and practices in relation to the care of young people detained in police cells. This will be carried out in conjunction with staff from the Independent Police Conduct Authority (IPCA) and the Human Rights Commission. Although this is not work the Office is currently gazetted to do, it is concerned that young people in cells are a group needing the specific attention of an NPM. The Office has signed a Memorandum of Understanding with the IPCA, outlining how the two agencies will support each other to address the needs of these young people.

The Office asked Child, Youth and Family to consider including information on the Crimes of Torture Act, NPM responsibilities and OPCAT in the new induction training package being developed for residential staff and this has been actioned.

Inspector of Service Penal Establishments

The Inspector of Service Penal Establishments (ISPE) is the NPM charged with monitoring New Zealand Defence Force detention facilities.

The appointment of the ISPE is tied to the appointment of the Registrar of the Court Martial of New Zealand, an official appointed independently by the Chief Judge of that jurisdiction by the provisions of the Court Martial Act 2007 (ss79 (1) and 80).

CONTEXT

The Services Corrective Establishment (SCE) is located in Burnham Military Camp, just south of Christchurch. In addition, there are a limited number of holding cells in each of the more significant New Zealand Defence Force (NZDF) base or camp facilities that are used to confine members of the armed forces for a few days at a time.

There are no detention facilities off-shore currently available to the NZDF on New Zealand Navy Ships or for the forces on operational deployments. However, they can be arranged relatively readily when required, as the Armed Forces Discipline Act s175(1) permits the Chief of Defence Force from time to time to:

- set aside any building or part of a building as a service prison or a detention quarter
- declare any place or ship, or part of any place or ship, to be a service prison or detention quarter.

APPROACH

The ISPE has no staff, but has the capacity to second if required to assist meeting OPCAT objectives. The Inspector's role is to ensure that

all members of the armed forces deprived of their liberty are treated with humanity and respect and not subjected to torture or to cruel, inhuman or degrading treatment or punishment.

ISPE continues to arrive unannounced at the reception office of SCE and, after presenting credentials, meets with the Chief Warden before reviewing the documentation, inspecting the facilities and interviewing each detainee individually and in private. Feedback is provided routinely at the conclusion of the inspection to the Commandant of SCE and to the Chief Warden. Any significant concern identified is reported directly to the Chief of Defence Force.

SUMMARY OF ACTIVITIES

While up to eight inspections are authorised, three inspections of SCE were completed in 2009-10. The cells at 2 Land Force Group in Linton Military Camp and Burnham Camp were also inspected in the reporting period.

ISSUES

ISPE continues to receive cooperation at all levels of the NZDF and has been impressed to date with endeavours to comply with the obligations to OPCAT.

SCE is a fairly modern but small detention facility that can cater for up to eight detainees at any one time. It has a professional staff of non-commissioned officer wardens drawn from all three armed services. They are supported by a senior officer from Headquarters 3 Land Force Group, who holds a dual appointment that includes the position of Commandant SCE in his or her job description. The ISPE's inspections this year to SCE and interviews with detainees have raised no OPCAT concerns. The ISPE is satisfied

with the treatment and conditions of detention and with the measures in place there to prevent torture and ill treatment in the future.

With one or two minor exceptions, the standard of detention accommodation available in the camps and bases, though spartan, is suitable for the purpose to which it is put; maintaining good order and military discipline by detaining members of the armed forces for short periods (usually less than 48 hours). A substandard cell in Burnham Camp, under the control of Burnham Camp rather than SCE, was detected by the ISPE during a routine inspection and quickly removed from the inventory by the local Commander, following a recommendation from the ISPE that it was potentially unsafe.

If SCE remains resourced and managed at current levels, the ISPE is confident that SCE is unlikely to generate OPCAT issues. The ad hoc nature of the management of detainees confined in camp and base facilities is a potential vulnerability for the armed forces though. This is something the Chief of Defence Force was alerted to recently and has been tasked to the service chiefs for reviewing.

GOING FORWARD

IPSE intends to complete up to eight OPCAT inspections of SCE in the 2010-11 year. Further visits to camp and base holding cells will also be arranged to ensure the facilities meet minimum requirements and that the management of detainees is robust enough to ensure OPCAT objectives continue to be met by the New Zealand Armed Forces.

Summary of emerging issues

COOPERATION

The reports of the NPMs once again note the high level of cooperation provided by the detaining agencies and willingness to engage with the OPCAT process in order to achieve positive improvements.

NPMs have continued to receive referrals and requests for input from agencies and institutions, who recognise the benefits and potential of the OPCAT mechanism to improve conditions, eliminate risks, and prevent harm. These positive engagements and the development of strong relationships with agencies is welcome.

RESOURCES

NPMs have continued to operate efficiently within the limitations of available resources, using very small teams and careful prioritising and planning of monitoring programmes.

Collaborative work and innovation – such as the specialist site visit model used by the IPCA – has enabled NPMs to augment their small visiting teams and ensure that different perspectives and expertise are represented.

While these developments have been valuable, in the longer term, further resources will be required to enable NPMs to continue to expand and develop their teams and monitoring programmes in line with international best practice.

OPCAT is premised on the notion that all places of detention are visited regularly, and with sufficient frequency, in order to effectively prevent ill treatment. Given the large number of facilities to be visited, without further expansion, NPMs will need to continue to prioritise and adopt a “risk management” approach, and some sites may not receive an OPCAT visit for many years.

Other issues that have emerged and relevant human rights standards are outlined below. NPMs have worked, and continue to work with the agencies and institutions concerned to address specific concerns.

OLDER FACILITIES

The findings of OPCAT visits have highlighted inadequate conditions in some of the older facilities in particular, and the need for substantial investment in order to bring these to standard.

Agencies have in place various programmes to manage the maintenance and replacement of older facilities. However, continued demand for detention facilities and the costs of renovation or replacement of old facilities pose significant challenges.

Addressing these challenges, and improving the conditions in older facilities (or removing them from use), should be prioritised to ensure all places of detention in New Zealand meet human rights standards.

Human rights standards stress that accommodations must be safe, healthy and humane. It is crucial that facilities where people are detained are suitable for the purpose, and that the physical environments are conducive to respect for human rights and dignity.

In particular, the UN Standard Minimum Rules for the Treatment of Prisoners stipulate that:

10. All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.

SEARCHES AND USE OF RESTRAINTS

Any use of force, personal searches or use of mechanical restraints represents a significant interference with individual rights and freedoms. Accordingly, human rights standards require stringent safeguards and restrictions around their use. International human rights bodies have also made statements and provided guidance on how the standards are to be applied.

In New Zealand, these measures are provided for in legislation, and in some cases, policies.

OPCAT visit findings and NPM discussions have highlighted some issues around the legislative basis, policies and practices regarding use of restraints and searches of people in detention. There are some indications of variations between agencies, as well as local variations in policy and practice, and that some powers are being used on a more routine basis than currently provided for in legislation.

These procedures and related practices should be regularly reviewed to ensure that human rights standards are explicitly recognised and respected in daily practice.

International human rights bodies have stated that resort to strip searching of prisoners must be based on an individual assessment and be carried out in such a way as to respect, as far as possible, the dignity of the prisoners concerned.⁶

Human rights standards state that instruments of restraint are only used legitimately, for no longer than strictly necessary, and never as a punishment.

The European Committee on Prevention of Torture has recently issued further guidance in the form of the following principles and minimum standards:⁷

- Regarding its appropriate use, immobilisation should only be used as a last resort to prevent the risk of harm to the individual or others and only when all other reasonable options would fail satisfactorily to contain those risks; it should never be used as a punishment or to compensate for shortages of trained staff; it should not be used in a non-medical setting when hospitalisation would be a more appropriate intervention.
- Any resort to immobilisation should be immediately brought to the attention of a doctor in order to assess the need for the measure, as opposed to certifying the individual's fitness for it.
- The equipment used should be properly designed to limit harmful effects, discomfort and pain during restraint, and staff must be trained in the use of the equipment.
- The duration of fixation should be for the shortest possible time (usually minutes rather than hours). The exceptional prolongation of restraint should warrant a further review by

⁶ For example, see: European Committee for the Prevention of Torture, Report to the Government of the Slovak Republic on the visit to the Slovak Republic carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 24 March to 2 April 2009, CPT/Inf (2010). Report to the Government of the United Kingdom on the visit to the United Kingdom carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 18 November to 1 December 2008, CPT/Inf (2009).

⁷ European Committee for the Prevention of Torture (2008), Report to the Government of Denmark on the visit to Denmark carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 11 to 20 February 2008, CPT/Inf (2008).

a doctor. Restraint for periods of days at a time cannot have any justification and would amount to ill treatment.

- Persons subject to immobilisation should receive full information on the reasons for the intervention.
- The management of any establishment which might use immobilisation should issue formal written guidelines, taking account of the above criteria, to all staff who may be involved.
- An individual subject to immobilisation should, at all times, have his/her mental and physical state continuously and directly monitored by an identified member of the health care staff or another suitably trained member of staff who has not been involved in the circumstances which gave rise to the application of immobilisation. The staff member concerned

should offer immediate human contact to the immobilised person, reduce his/her anxiety, communicate with the individual and rapidly respond, including to the individual's personal needs regarding oral intake, hygiene and urination and defecation. Such individualised staff supervision should be performed from within the room or, if the inmate so wishes, very near the door (within hearing and so that personal contact can be established immediately). The supervising staff member should be required to maintain a written running record.

Further, the person concerned should be given the opportunity to discuss his/her experience, during and, in any event, as soon as possible after the end of a period of restraint. This discussion should always involve a senior member of the health care staff or another senior member of staff with appropriate training.

APPENDIX 1: OPCAT background

INTRODUCTION TO OPCAT

The [Optional Protocol to the Convention against Torture](#) (OPCAT)¹ is an international human rights treaty that New Zealand signed up to in 2007. It is designed to assist States to meet their obligations to prevent torture and ill treatment in places where people are deprived of their liberty. Unlike other human rights treaty processes that deal with violations of rights after the fact, the OPCAT is primarily concerned with preventing violations. It is based on the premise, supported by practical experience, that regular visits to places of detention are an effective means of preventing ill treatment and improving conditions of detention. This preventive approach aims to ensure that sufficient safeguards against ill treatment are in place and that any problems or risks are identified and addressed.

The OPCAT establishes a dual system of preventive monitoring, undertaken by international and national monitoring bodies. The international body, the [UN Subcommittee for the Prevention of Torture](#), will periodically visit each State party to inspect places of detention and make recommendations to the State. At the national level, independent monitoring bodies called National Preventive Mechanisms (NPMs) are empowered under OPCAT to regularly visit places of detention, and make recommendations aimed at strengthening protections, improving treatment and conditions, and preventing torture or ill treatment.

“Whether or not ill treatment occurs in practice, there is always a need for States to be vigilant in order to prevent ill treatment. The scope of preventive work is large, encompassing any form of abuse of people deprived of their liberty which, if unchecked, could grow into torture or other cruel, inhuman or degrading treatment or punishment. Preventive visiting looks at legal and system features and current practice, including conditions, in order to identify where the gaps in protection exist and which safeguards require strengthening.”²

IMPLEMENTATION IN NEW ZEALAND

New Zealand ratified OPCAT in March 2007, following the enactment of amendments to the [Crimes of Torture Act 1989](#)³, to provide for visits by the UN Subcommittee and the establishment of NPMs.

New Zealand’s designated NPMs are:

- the [Office of the Ombudsmen](#) – in relation to prisons, immigration detention facilities, health and disability places of detention, and Child, Youth and Family residences
- the [Independent Police Conduct Authority](#) – in relation to people held in police cells and otherwise in the custody of the police
- the [Office of the Children’s Commissioner](#) – in relation to children and young persons in Child, Youth and Family residences
- the Inspector of Service Penal Establishments of the Office of the Judge Advocate General – in relation to Defence Force Service Custody and Service Corrective Establishments
- the [Human Rights Commission](#) has a coordination role as the designated Central NPM.

1 The full text of the OPCAT is set out in Appendix 4.

2 Subcommittee on Prevention of Torture, First Annual Report of the Subcommittee on Prevention of Torture, CAT/C/40/2, (May 2008), para 12.

3 A copy of the relevant part of the Act is included as Appendix 5.

“The very fact that national or international experts have the power to inspect every place of detention at any time without prior announcement, have access to prison registers and other documents, [and] are entitled to speak with every detainee in private ... has a strong deterrent effect. At the same time, such visits create the opportunity for independent experts to examine, at first hand, the treatment of prisoners and detainees and the general conditions of detention ... Many problems stem from inadequate systems which can easily be improved through regular monitoring. By carrying out regular visits to places of detention, the visiting experts usually establish a constructive dialogue with the authorities concerned in order to help them resolve problems observed.”⁴

FUNCTIONS AND POWERS OF NATIONAL PREVENTIVE MECHANISMS

By ratifying OPCAT, States agree to designate one or more (NPM) for the prevention of torture (Article 17) and to ensure that these mechanisms are independent, have the necessary capability and expertise, and are adequately resourced to fulfil their function (article 18).

The minimum powers NPMs must have are set out in article 19. These include the power to regularly examine the treatment of people in detention; to make recommendations to relevant authorities; and submit proposals or observations regarding existing or proposed legislation.

NPMs are entitled to access all relevant information on the treatment of detainees and the conditions of detention; to access all places of detention and conduct private interviews

with people who are detained or who may have relevant information. The NPMs have the right to choose the places they want to visit and the persons they want to interview (article 20). NPMs must also be able to have contact with the international Subcommittee and publish annual reports (article 20, 23).

The State authorities are obliged, under article 22, to examine the recommendations made by the NPM and discuss their implementation.

The [Crimes of Torture Act](#) enables the Minister of Justice to designate one or more NPM as well as a Central NPM and sets out the functions and powers of these bodies. Under section 27 of the Act, the functions of an NPM include examining the conditions of detention and treatment of detainees, and making recommendations to improve conditions and treatment and prevent torture or other forms of ill treatment. Sections 28-30 set out the powers of NPMs, ensuring they have all powers of access required under OPCAT.

CENTRAL NATIONAL PREVENTIVE MECHANISM

OPCAT envisions a system of regular visits to all places of detention.⁵ The designation of a central mechanism aims to ensure there is coordination and consistency among multiple NPMs so they operate as a cohesive system. Central coordination can also help to ensure any gaps in coverage are identified and that the monitoring system operates effectively across all places of detention.

The functions of the Central National Preventive Mechanism (CNPM) are set out in section 32 of the Crimes of Torture Act, and are to coordinate the activities of the NPMs and maintain effective

4 UN Special Rapporteur on Torture, Report of the Special Rapporteur on torture to the 61st session of the UN General Assembly, A/61/259 (14 August, 2006), para 72.

liaison with the UN Subcommittee on Prevention of Torture. In carrying out these functions, the CNPM is to:

- consult and liaise with NPMs
- review their reports and advise of any systemic issues
- coordinate the submission of reports to the UN Subcommittee
- in consultation with NPMs, make recommendations on any matters concerning the prevention of torture and ill treatment in places of detention.

MONITORING PROCESSES

While the OPCAT sets out the requirements, functions and powers of NPMs, it does not prescribe in detail how preventive monitoring is to be carried out. New Zealand's OPCAT organisations have developed procedures applicable to each detention context.

The general approach to preventive visits, based on international guidelines, involves:

- Preparatory work, including information collection and identifying specific objectives, before a visit takes place.
- The visit itself, during which the NPM visitors speak with management and staff, inspect the institution's facilities and documentation, and speak with people who are detained.
- Upon completion of the visit, discussions with the relevant staff, summarising the NPM's findings and providing an opportunity for an initial response.

- A report to the relevant authorities of the NPM's findings and recommendations, which forms the basis of ongoing dialogue to address identified issues.

NPMs' assessment of the conditions and treatment of detention facilities takes account of international human rights standards,⁶ and involves looking at:⁷

- Treatment: any allegations of torture or ill-treatment; the use of isolation, force and restraint.
- Protection measures: registers, provision of information, complaint and inspection procedures, disciplinary procedures.
- Material conditions: accommodation, lighting and ventilation, personal hygiene, sanitary facilities, clothing and bedding, food.
- Activities and access to others: contact with family and the outside world, outdoor exercise, education, leisure activities, religion.
- Health services: access to medical care.
- Staff: conduct and training.

5 OPCAT, article 1.

6 A list of key human rights instruments is set out in Appendix 2.

7 A copy of the monitoring standards framework is included as Appendix 3.

APPENDIX 2: Human rights standards

The development of the standards for NPM monitoring have been formulated with reference to the international human rights framework. This includes the binding human rights treaties that New Zealand has signed up to, as well as other international instruments (such as declarations, principles, guidelines, standard rules and recommendations) that provide guidance for States to comply with binding instruments.

Binding international instruments include:

[Convention against Torture and other forms of cruel, inhuman or degrading Treatment or Punishment \(CAT\)](#)

[Optional Protocol to the Convention against Torture \(OPCAT\)](#)

[International Covenant on Civil and Political Rights \(ICCPR\)](#)

[Convention on the Rights of the Child \(CRC\)](#)

[Convention on the Elimination of All Forms of Discrimination against Women \(CEDAW\)](#)

[International Convention on the Elimination of All Forms of Racial Discrimination \(CERD\)](#)

[Convention on the Rights of Persons with Disabilities \(CRPD\)](#)

Other relevant international instruments include:

[Standard Minimum Rules for the Treatment of Prisoners \(SMR\)](#)

[Basic Principles for the Treatment of Prisoners \(BTP\)](#)

[Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment \(BPP\)](#)

[United Nations Rules for the Protection of Juveniles Deprived of their Liberty \(RPJDL\)](#)

[United Nations Standard Minimum Rules for the Administration of Juvenile Justice \(“The Beijing Rules”\)](#)

[Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment \(PME\)](#)

[Code of Conduct for Law Enforcement Officials \(CCLEO\)](#)

[Basic Principles on the Use of Force and Firearms by Law Enforcement Officials \(BPUF\)](#)

[Principles for the protection of persons with mental illness and the improvement of mental health care \(PMI\)](#)

[Minimum Interrogation Standards developed by the Advisory Council of Jurists to the Asia Pacific Forum of National Human Rights Institutions⁸ \(MIS\)](#)

[European Committee for the Prevention of Torture, The CPT Standards: ‘Substantive’ sections of the CPT’s General Reports \(CPT\)](#)

[United Nations Human Rights Committee General Comments on the implementation of the ICCPR: \[General Comment 20 \\(GC20\\)\]\(#\) and \[General Comment 21 \\(GC21\\)\]\(#\)](#)

⁸ The Advisory Council of Jurists (ACJ) is a body of eminent jurists that advises the Asia Pacific Forum of National Human Rights Institutions (APF) on the interpretation and application of international human rights law.

APPENDIX 3: Monitoring standards framework

Although the detailed standards and measures used by National Preventive Mechanisms are tailored to suit each type of detention facility,⁹ the following is the basic framework applied. These issues and standards have been drawn from international human rights standards and monitoring guidelines.

Issues	Standards
Treatment	
Torture and ill treatment	<p>No one is subjected to torture or ill treatment</p> <p>Any allegations of torture or ill treatment are promptly and thoroughly investigated and addressed through appropriate channels</p>
Use of force or restraint	<p>Force is only used legitimately – only ever as a last resort and to the minimum extent possible – in strict accordance with the principles of necessity and proportionality and within prescribed procedures</p> <p>Any use of force is documented, reported and reviewed</p> <p>Immediate access to medical examination and treatment is provided whenever force is used</p> <p>Instruments of restraint are only used legitimately, for no longer than strictly necessary, and never as a punishment</p>
Segregation / isolation / seclusion	<p>Use of segregation is strictly in accordance with legislation</p> <p>Use of conditions amounting to isolation is limited and is accompanied by safeguards, including access to medical examination and monitoring, review and appeal</p> <p>Access to basic necessities, including food, light and exercise should never be denied</p>

⁹ For example, see the IPCA checklist for inspecting police detention facilities, accessible at <http://www.ipca.govt.nz/Site/publications/Conditions-of-detention-in-Police-custody/Default.aspx>.

Issues	Standards
Protection Measures	
Information	<p>People in detention are effectively informed of their rights and obligations and about the operation of the place of detention</p> <p>Persons under arrest are informed of the reasons for their arrest and any charges, and of their rights</p> <p>Questioning is conducted in accordance with Minimum Interrogation Standards</p>
Disciplinary procedures	<p>Disciplinary procedures are set out in clear rules, and these are effectively conveyed to detainees and staff</p> <p>Rules and sanctions are lawful, reasonable, and proportionate, and are fairly and consistently applied</p> <p>The rules of natural justice are applied, including that people in detention have a right to be heard before a competent authority, to prepare a defence and have a right to appeal</p>
Complaint and inspection procedures	<p>People in detention have access to effective internal and external complaint mechanisms – they are able to make a complaint if and when they want to, without fear of adverse consequences</p> <p>Complaints are dealt with in a fair, timely, and effective manner</p> <p>Inspection mechanisms are able to visit regularly, and people in detention are able to communicate freely and confidentially with inspection bodies</p>
Categories of people in detention	<p>For their protection, and in recognition of the special needs of different categories of detainees, people in detention are separated according to gender, age, and judicial/legal status:</p> <ul style="list-style-type: none"> - Young people are detained separately from adults - Accused persons are detained separately from convicted persons - Men and women are detained separately <p>Attention is given to the specific needs of particular groups – such as young people, women, older people, disabled people, foreign nationals, minority groups and other vulnerable groups – to ensure their safety, equality of access to all facilities and services and that conditions and treatment are appropriate to their needs</p>

Issues	Standards
	Protection Measures
Registers	An official record is maintained of detainees' identity, legal reason for detention, time of arrest, time of arrival and departure, physical state on arrival/departure, and any incidents
	Material Conditions
Accommodation	<p>People in detention are accommodated in a safe, clean and decent environment that is suitable for the purpose and for their individual needs</p> <p>Living conditions – space, lighting, ventilation, heating, hygiene, clothing and bedding, food, drink and exercise – are sufficient to adequately provide for the health, dignity, privacy and other needs of people in detention</p>
Personal hygiene, sanitary facilities	<p>Hygiene and sanitary facilities and procedures are adequate to ensure the health, dignity and privacy of people in detention, and facilities are clean and well maintained</p> <p>People in detention always have ready access to toilets and clean water, regular access to bathing and shower facilities and necessary toiletry items</p> <p>People in detention are encouraged, enabled and expected to maintain good personal hygiene, and keep themselves, their cells/accommodation and clothing clean</p>
Food	<p>People in detention are provided sufficient and adequate quantity, quality and variety of food and drink necessary for a healthy diet, and to meet their individual needs</p> <p>Food is prepared and served in accordance with hygiene standards and in a manner and environment that respects the dignity of the person</p>

Issues	Standards
Activities	
<p>Administration of time, availability of activities (work, education, religion, leisure)</p>	<p>At least one hour of exercise in fresh air each day is available to all people in detention</p> <p>For their physical and mental well-being, and to assist in their personal development and reintegration into society, people in detention should spend time outside their cells, engaged in purposeful activities – including meaningful, remunerated employment; education; recreational and cultural activities</p> <p>Working conditions and health and safety requirements are observed</p> <p>People in detention are able to exercise their right to freedom of religion and belief, to observe and practice their religion if they choose to, and have access to a representative of their religion</p>
<p>Access to others</p>	<p>Contact with the outside world and, in particular, maintenance of relationships with family are facilitated through correspondence and visits</p> <p>Any conditions, limitations or supervision of visits or outside contact are necessary, reasonable, and proportionate</p> <p>All people in detention are able to be visited by and have confidential communication with legal advisers</p> <p>Foreign nationals have access to their diplomatic/consular representative or other representative organisation</p> <hr/> <p>Persons under arrest are able to notify a third party, have access to a lawyer, the right to a medical examination; and are brought before a court as soon as possible</p>

Issues	Standards
Medical Services	
Health services	<p>Health services – including: medical, psychiatric, dental, pre/post natal care – are provided on an equitable basis to all people in detention, to an equivalent standard as that available in the community, and in conditions that ensure decency, privacy and dignity</p> <p>All people who are detained have access to a medical examination on admission</p>
Staff	
Staff	<p>Staff ensure that all people in detention are treated with respect for their dignity and humanity</p> <p>All staff have the skills, attributes, professional training and support necessary for their role, and to ensure a safe, secure and respectful environment</p>

APPENDIX 4: Optional Protocol to the Convention against Torture

Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

Adopted on 18 December 2002 at the fifty-seventh session of the General Assembly of the United Nations by resolution A/RES/57/199.

Entered into force on 22 June 2006

PREAMBLE

The States Parties to the present Protocol,

Reaffirming that torture and other cruel, inhuman or degrading treatment or punishment are prohibited and constitute serious violations of human rights,

Convinced that further measures are necessary to achieve the purposes of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the Convention) and to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment,

Recalling that articles 2 and 16 of the Convention oblige each State Party to take effective measures to prevent acts of torture and other cruel, inhuman or degrading treatment or punishment in any territory under its jurisdiction,

Recognizing that States have the primary responsibility for implementing those articles, that strengthening the protection of people deprived of their liberty and the full respect for their human rights is a common responsibility shared by all and that international implementing bodies complement and strengthen national measures,

Recalling that the effective prevention of torture and other cruel, inhuman or degrading treatment or punishment requires education and a combination of various legislative, administrative, judicial and other measures,

Recalling also that the World Conference on Human Rights firmly declared that efforts to eradicate torture should first and foremost be concentrated on prevention and called for the adoption of an optional protocol to the Convention, intended to establish a preventive system of regular visits to places of detention,

Convinced that the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment can be strengthened by non-judicial means of a preventive nature, based on regular visits to places of detention, Have agreed as follows:

PART I

General principles

Article 1

The objective of the present Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.

Article 2

1. A Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture (hereinafter referred to as the Subcommittee on Prevention) shall be established and shall carry out the functions laid down in the present Protocol.
2. The Subcommittee on Prevention shall carry out its work within the framework of the Charter of the United Nations and shall be guided by the purposes and principles thereof, as well as the norms of the United Nations concerning the treatment of people deprived of their liberty.
3. Equally, the Subcommittee on Prevention shall be guided by the principles of confidentiality, impartiality, non-selectivity, universality and objectivity.

4. The Subcommittee on Prevention and the States Parties shall cooperate in the implementation of the present Protocol.

Article 3

Each State Party shall set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter referred to as the national preventive mechanism).

Article 4

1. Each State Party shall allow visits, in accordance with the present Protocol, by the mechanisms referred to in articles 2 and 3 to any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence (hereinafter referred to as places of detention). These visits shall be undertaken with a view to strengthening, if necessary, the protection of these persons against torture and other cruel, inhuman or degrading treatment or punishment.

2. For the purposes of the present Protocol, deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority.

PART II

Subcommittee on Prevention

Article 5

1. The Subcommittee on Prevention shall consist of ten members. After the fiftieth ratification of or accession to the present Protocol, the number of the members of the Subcommittee on Prevention shall increase to twenty-five.

2. The members of the Subcommittee on Prevention shall be chosen from among persons of high moral character, having proven professional experience in the field of the administration of justice, in particular criminal law, prison or police administration, or in the various fields relevant to the treatment of persons deprived of their liberty.

3. In the composition of the Subcommittee on Prevention due consideration shall be given to equitable geographic distribution and to the representation of different forms of civilization and legal systems of the States Parties.

4. In this composition consideration shall also be given to balanced gender representation on the basis of the principles of equality and non-discrimination.

5. No two members of the Subcommittee on Prevention may be nationals of the same State.

6. The members of the Subcommittee on Prevention shall serve in their individual capacity, shall be independent and impartial and shall be available to serve the Subcommittee on Prevention efficiently.

Article 6

1. Each State Party may nominate, in accordance with paragraph 2 of the present article, up to two candidates possessing the qualifications and meeting the requirements set out in article 5, and in doing so shall provide detailed information on the qualifications of the nominees.

2.

(a) The nominees shall have the nationality of a State Party to the present Protocol;

(b) At least one of the two candidates shall have the nationality of the nominating State Party;

(c) No more than two nationals of a State Party shall be nominated;

(d) Before a State Party nominates a national of another State Party, it shall seek and obtain the consent of that State Party.

3. At least five months before the date of the meeting of the States Parties during which the elections will be held, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall submit a list, in alphabetical order, of all persons thus nominated, indicating the States Parties that have nominated them.

Article 7

1. The members of the Subcommittee on Prevention shall be elected in the following manner:

(a) Primary consideration shall be given to the fulfilment of the requirements and criteria of article 5 of the present Protocol;

(b) The initial election shall be held no later than six months after the entry into force of the present Protocol;

(c) The States Parties shall elect the members of the Subcommittee on Prevention by secret ballot;

(d) Elections of the members of the Subcommittee on Prevention shall be held at biennial meetings of the States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Subcommittee on Prevention shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of the States Parties present and voting.

2. If during the election process two nationals of a State Party have become eligible to serve as members of the Subcommittee on Prevention, the candidate receiving the higher number of votes shall serve as the member of the Subcommittee on Prevention. Where nationals have received the same number of votes, the following procedure applies:

(a) Where only one has been nominated by the State Party of which he or she is a national, that national shall serve as the member of the Subcommittee on Prevention;

(b) Where both candidates have been nominated by the State Party of which they are nationals, a separate vote by secret ballot shall be held to determine which national shall become the member;

(c) Where neither candidate has been nominated by the State Party of which he or she is a national, a separate vote by secret ballot shall be held to determine which candidate shall be the member.

Article 8

If a member of the Subcommittee on Prevention dies or resigns, or for any cause can no longer perform his or

her duties, the State Party that nominated the member shall nominate another eligible person possessing the qualifications and meeting the requirements set out in article 5, taking into account the need for a proper balance among the various fields of competence, to serve until the next meeting of the States Parties, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

Article 9

The members of the Subcommittee on Prevention shall be elected for a term of four years. They shall be eligible for re-election once if renominated. The term of half the members elected at the first election shall expire at the end of two years; immediately after the first election the names of those members shall be chosen by lot by the Chairman of the meeting referred to in article 7, paragraph 1 (d).

Article 10

1. The Subcommittee on Prevention shall elect its officers for a term of two years. They may be re-elected.

2. The Subcommittee on Prevention shall establish its own rules of procedure. These rules shall provide, inter alia, that:

(a) Half the members plus one shall constitute a quorum;

(b) Decisions of the Subcommittee on Prevention shall be made by a majority vote of the members present;

(c) The Subcommittee on Prevention shall meet in camera.

3. The Secretary-General of the United Nations shall convene the initial meeting of the Subcommittee on Prevention. After its initial meeting, the Subcommittee on Prevention shall meet at such times as shall be provided by its rules of procedure. The Subcommittee on Prevention and the Committee against Torture shall hold their sessions simultaneously at least once a year.

PART III**Mandate of the Subcommittee on Prevention****Article 11**

1. The Subcommittee on Prevention shall:

(a) Visit the places referred to in article 4 and make recommendations to States Parties concerning the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;

(b) In regard to the national preventive mechanisms:

(i) Advise and assist States Parties, when necessary, in their establishment;

(ii) Maintain direct, and if necessary confidential, contact with the national preventive mechanisms and offer them training and technical assistance with a view to strengthening their capacities;

(iii) Advise and assist them in the evaluation of the needs and the means necessary to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;

(iv) Make recommendations and observations to the States Parties with a view to strengthening the capacity and the mandate of the national preventive mechanisms for the prevention of torture and other cruel, inhuman or degrading treatment or punishment;

(c) Cooperate, for the prevention of torture in general, with the relevant United Nations organs and mechanisms as well as with the international, regional and national institutions or organizations working towards the strengthening of the protection of all persons against torture and other cruel, inhuman or degrading treatment or punishment.

Article 12

In order to enable the Subcommittee on Prevention to comply with its mandate as laid down in article 11, the States Parties undertake:

(a) To receive the Subcommittee on Prevention in their territory and grant it access to the places of detention as defined in article 4 of the present Protocol;

(b) To provide all relevant information the Subcommittee on Prevention may request to evaluate the needs and measures that should be adopted to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;

(c) To encourage and facilitate contacts between the Subcommittee on Prevention and the national preventive mechanisms;

(d) To examine the recommendations of the Subcommittee on Prevention and enter into dialogue with it on possible implementation measures.

Article 13

1. The Subcommittee on Prevention shall establish, at first by lot, a programme of regular visits to the States Parties in order to fulfil its mandate as established in article 11.

2. After consultations, the Subcommittee on Prevention shall notify the States Parties of its programme in order that they may, without delay, make the necessary practical arrangements for the visits to be conducted.

3. The visits shall be conducted by at least two members of the Subcommittee on Prevention. These members may be accompanied, if needed, by experts of demonstrated professional experience and knowledge in the fields covered by the present Protocol who shall be selected from a roster of experts prepared on the basis of proposals made by the States Parties, the Office of the United Nations High Commissioner for Human Rights and the United Nations Centre for International Crime Prevention. In preparing the roster, the States Parties concerned shall propose no more than five national experts. The State Party concerned may oppose the inclusion of a specific expert in the visit, whereupon the Subcommittee on Prevention shall propose another expert.

4. If the Subcommittee on Prevention considers it appropriate, it may propose a short follow-up visit after a regular visit.

Article 14

1. In order to enable the Subcommittee on Prevention to fulfil its mandate, the States Parties to the present Protocol undertake to grant it:

(a) Unrestricted access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;

(b) Unrestricted access to all information referring to the treatment of those persons as well as their conditions of detention;

(c) Subject to paragraph 2 below, unrestricted access to all places of detention and their installations and facilities;

(d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the Subcommittee on Prevention believes may supply relevant information;

(e) The liberty to choose the places it wants to visit and the persons it wants to interview.

2. Objection to a visit to a particular place of detention may be made only on urgent and compelling grounds of national defence, public safety, natural disaster or serious disorder in the place to be visited that temporarily prevent the carrying out of such a visit. The existence of a declared state of emergency as such shall not be invoked by a State Party as a reason to object to a visit.

Article 15

No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the Subcommittee on Prevention or to its delegates any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.

Article 16

1. The Subcommittee on Prevention shall communicate its recommendations and observations confidentially to the State Party and, if relevant, to the national preventive mechanism.

2. The Subcommittee on Prevention shall publish its report, together with any comments of the State Party concerned, whenever requested to do so by that State

Party. If the State Party makes part of the report public, the Subcommittee on Prevention may publish the report in whole or in part. However, no personal data shall be published without the express consent of the person concerned.

3. The Subcommittee on Prevention shall present a public annual report on its activities to the Committee against Torture.

4. If the State Party refuses to cooperate with the Subcommittee on Prevention according to articles 12 and 14, or to take steps to improve the situation in the light of the recommendations of the Subcommittee on Prevention, the Committee against Torture may, at the request of the Subcommittee on Prevention, decide, by a majority of its members, after the State Party has had an opportunity to make its views known, to make a public statement on the matter or to publish the report of the Subcommittee on Prevention.

PART IV

National preventive mechanisms

Article 17

Each State Party shall maintain, designate or establish, at the latest one year after the entry into force of the present Protocol or of its ratification or accession, one or several independent national preventive mechanisms for the prevention of torture at the domestic level. Mechanisms established by decentralized units may be designated as national preventive mechanisms for the purposes of the present Protocol if they are in conformity with its provisions.

Article 18

1. The States Parties shall guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel.

2. The States Parties shall take the necessary measures to ensure that the experts of the national preventive mechanism have the required capabilities and professional knowledge. They shall strive for a gender balance and the adequate representation of ethnic and minority groups in the country.

3. The States Parties undertake to make available the necessary resources for the functioning of the national preventive mechanisms.

4. When establishing national preventive mechanisms, States Parties shall give due consideration to the Principles relating to the status of national institutions for the promotion and protection of human rights.

Article 19

The national preventive mechanisms shall be granted at a minimum the power:

(a) To regularly examine the treatment of the persons deprived of their liberty in places of detention as defined in article 4, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment;

(b) To make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations;

(c) To submit proposals and observations concerning existing or draft legislation.

Article 20

In order to enable the national preventive mechanisms to fulfil their mandate, the States Parties to the present Protocol undertake to grant them:

(a) Access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;

(b) Access to all information referring to the treatment of those persons as well as their conditions of detention;

(c) Access to all places of detention and their installations and facilities;

(d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the national preventive mechanism believes may supply relevant information;

(e) The liberty to choose the places they want to visit and the persons they want to interview;

(f) The right to have contacts with the Subcommittee on Prevention, to send it information and to meet with it.

Article 21

1. No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the national preventive mechanism any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.

2. Confidential information collected by the national preventive mechanism shall be privileged. No personal data shall be published without the express consent of the person concerned.

Article 22

The competent authorities of the State Party concerned shall examine the recommendations of the national preventive mechanism and enter into a dialogue with it on possible implementation measures.

Article 23

The States Parties to the present Protocol undertake to publish and disseminate the annual reports of the national preventive mechanisms.

PART V

Declaration

Article 24

1. Upon ratification, States Parties may make a declaration postponing the implementation of their obligations under either part III or part IV of the present Protocol.

2. This postponement shall be valid for a maximum of three years. After due representations made by the State Party and after consultation with the Subcommittee on Prevention, the Committee against Torture may extend that period for an additional two years.

PART VI**Financial provisions****Article 25**

1. The expenditure incurred by the Subcommittee on Prevention in the implementation of the present Protocol shall be borne by the United Nations.
2. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Subcommittee on Prevention under the present Protocol.

Article 26

1. A Special Fund shall be set up in accordance with the relevant procedures of the General Assembly, to be administered in accordance with the financial regulations and rules of the United Nations, to help finance the implementation of the recommendations made by the Subcommittee on Prevention after a visit to a State Party, as well as education programmes of the national preventive mechanisms.
2. The Special Fund may be financed through voluntary contributions made by Governments, intergovernmental and non-governmental organizations and other private or public entities.

PART VII**Final provisions****Article 27**

1. The present Protocol is open for signature by any State that has signed the Convention.
2. The present Protocol is subject to ratification by any State that has ratified or acceded to the Convention. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Protocol shall be open to accession by any State that has ratified or acceded to the Convention.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States that have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

Article 28

1. The present Protocol shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying the present Protocol or acceding to it after the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession, the present Protocol shall enter into force on the thirtieth day after the date of deposit of its own instrument of ratification or accession.

Article 29

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

Article 30

No reservations shall be made to the present Protocol.

Article 31

The provisions of the present Protocol shall not affect the obligations of States Parties under any regional convention instituting a system of visits to places of detention. The Subcommittee on Prevention and the bodies established under such regional conventions are encouraged to consult and cooperate with a view to avoiding duplication and promoting effectively the objectives of the present Protocol.

Article 32

The provisions of the present Protocol shall not affect the obligations of States Parties to the four Geneva Conventions of 12 August 1949 and the Additional Protocols thereto of 8 June 1977, nor the opportunity available to any State Party to authorize the International Committee of the Red Cross to visit places of detention in situations not covered by international humanitarian law.

Article 33

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the present Protocol and the Convention. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any act or situation that may occur prior to the date on which the denunciation becomes effective, or to the actions that the Subcommittee on Prevention has decided or may decide to take with respect to the State Party concerned, nor shall denunciation prejudice in any way the continued consideration of any matter already under consideration by the Subcommittee on Prevention prior to the date on which the denunciation becomes effective.

3. Following the date on which the denunciation of the State Party becomes effective, the Subcommittee on Prevention shall not commence consideration of any new matter regarding that State.

Article 34

1. Any State Party to the present Protocol may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties to the present Protocol with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting at the conference shall be submitted by the Secretary-General of the United Nations to all States Parties for acceptance.

2. An amendment adopted in accordance with paragraph 1 of the present article shall come into force when it has been accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties that have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendment that they have accepted.

Article 35

Members of the Subcommittee on Prevention and of the national preventive mechanisms shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions. Members of the Subcommittee on Prevention shall be accorded the privileges and immunities specified in section 22 of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946, subject to the provisions of section 23 of that Convention.

Article 36

When visiting a State Party, the members of the Subcommittee on Prevention shall, without prejudice to the provisions and purposes of the present Protocol and such privileges and immunities as they may enjoy:

- (a) Respect the laws and regulations of the visited State;
- (b) Refrain from any action or activity incompatible with the impartial and international nature of their duties.

Article 37

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States.

APPENDIX 5: Part 2, Crimes of Torture Act 1989

Crimes of Torture Act 1989

PART 2

PREVENTION OF CRIMES OF TORTURE

Preliminary provisions

15 Purpose of this Part

The purpose of this Part is to enable New Zealand to meet its international obligations under the Optional Protocol.

16 Interpretation

In this Part, unless the context otherwise requires,—

Central National Preventive Mechanism means any person, body, or agency for the time being designated under section 31 as the Central National Preventive Mechanism

deprived of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order or agreement of any judicial, administrative, or other authority

detainee means a person in a place of detention who is deprived of his or her liberty

Minister means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

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 [Ombudsmen Act 1975](#);
- (b) the Independent Police Conduct Authority;
- (c) the Children's Commissioner;
- (d) visiting officers appointed in accordance with relevant Defence Force Orders issued pursuant to sections 175 and 206 of the [Armed Forces Discipline Act 1971](#);

(e) any other person, body or agency that is designated a National Preventive Mechanism

Optional Protocol means the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly of the United Nations on 18 December 2002, a copy of the English text of which is set out in Schedule 2

place of detention means any place in New Zealand where persons are or may be deprived of liberty, including, for example, detention 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](#)

Subcommittee means the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture, established in accordance with Part II of the Optional Protocol.

Section 16 **National Preventive Mechanism** paragraph (b): amended, on 29 November 2007, by section 26 of the Independent Police Conduct Authority Amendment Act 2007 (2007 No 38).

Visits by Subcommittee

17 Purpose of sections 18 to 20

The purpose of sections 18 to 20 is to enable the Subcommittee to fulfil its mandate set out in Article 11 of the Optional Protocol.

18 Subcommittee's access to information

Every person must permit the Subcommittee to have unrestricted access to the following information in relation to places of detention in New Zealand:

- (a) the number of places of detention:
- (b) the location of places of detention:
- (c) the number of detainees:
- (d) the treatment of detainees:
- (e) the conditions of detention applying to detainees.

19 Subcommittee's access to places of detention and persons detained

Every person must permit the Subcommittee to have unrestricted access to —

- (a) any place of detention in New Zealand and to every part of that place:
- (b) any person in a place of detention.

20 Subcommittee may conduct interviews

(1) Every person must permit the Subcommittee to interview, without witnesses, either personally or through an interpreter, —

- (a) any person in a place of detention:
- (b) any other person who the Subcommittee believes may be able to provide relevant information.

(2) No person or agency who has provided information in good faith to the Subcommittee may, in respect of the provision of that information, be subject to any —

- (a) criminal liability:
- (b) civil liability:

(c) disciplinary process:

(d) change in detention conditions:

(e) other disadvantage or prejudice of any kind.

(3) Subsection (2) applies regardless of whether the information provided to the Subcommittee was true.

(4) If requested by the Subcommittee, the person in charge of a place of detention must provide a safe and secure environment for the Subcommittee to conduct an interview with any detainee who is considered likely to behave in a manner that is —

- (a) offensive, threatening, abusive, or intimidating to any person; or
- (b) threatening or disruptive to the security and order of the place of detention.

21 Experts may accompany Subcommittee

If the Subcommittee requires it, 1 or more experts selected in accordance with paragraph 3 of Article 13 of the Optional Protocol may accompany the Subcommittee on any visit to a place of detention.

22 Objection to visit by Subcommittee

(1) The Minister may, by notice in writing to the Subcommittee, object to the Subcommittee having access to any place of detention for a temporary period if the Minister believes—

- (a) there is an urgent and compelling reason on 1 of the following grounds:
 - (i) national defence; or
 - (ii) public safety; or
 - (iii) natural disaster; or
 - (iv) serious disorder in the place of detention; and
- (b) that ground temporarily prevents access to the place of detention.

(2) On receiving a notice under subsection (1), the Subcommittee must delay its visit to the place of detention to a later date.

23 Appointment of New Zealand officials

The Minister may appoint 1 or more persons to accompany or assist the Subcommittee during visits to places of detention in New Zealand.

24 Identification certificates

The Minister may issue a certificate identifying—

- (a) any member of the Subcommittee;
- (b) any expert accompanying the Subcommittee;
- (c) other persons appointed under section 23 to accompany or assist the Subcommittee during visits to places of detention in New Zealand.

25 Ministerial directions

(1) The Minister may, by notice in writing, issue directions to any person in charge of a place of detention for the purpose of facilitating any visit to a place of detention in New Zealand by the Subcommittee.

(2) A person in charge of a place of detention must comply with any directions given by the Minister under this section.

National Preventive Mechanisms

26 Designation of National Preventive Mechanisms

(1) In accordance with Article 17 of the Optional Protocol, the Minister must, not later than 1 year after the Optional Protocol is ratified by New Zealand, designate by notice in the Gazette the number of National Preventive Mechanisms the Minister considers necessary.

(2) In designating a National Preventive Mechanism the Minister must have regard to the matters set out in Article 18 of the Optional Protocol.

(3) A National Preventive Mechanism may be designated—

- (a) in respect of such places of detention as may be specified in the notice; and
- (b) on any terms and conditions specified in the notice.

(4) After designating 1 or more National Preventive Mechanisms under subsection (1), the Minister may, at any time, by notice in the Gazette —

(a) revoke the designation of a National Preventive Mechanism:

(b) designate 1 or more other National Preventive Mechanisms:

(c) vary the designation of a National Preventive Mechanism to include or exclude such other places of detention as may be specified in the notice:

(d) vary or revoke the terms or conditions to which the designation of a National Preventive Mechanism is subject, or revoke those terms and conditions and impose new terms and conditions.

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 and at any other times the National Preventive Mechanism may decide,—

- (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 the 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 prepare at least 1 written report each year on the exercise of its functions under the Act during the year to which the report relates and provide that report to —

- (i) the House of Representatives, if the National Preventive Mechanism is an Officer of Parliament; or
- (ii) the Minister, if the National Preventive Mechanism is not an Officer of Parliament:

(d) to provide a copy of each report referred to in paragraph (c) to the Central National Preventive Mechanism (if designated).

28 National Preventive Mechanism's access to information

For the purposes of this Act, every person must permit a National Preventive Mechanism to have unrestricted access to the following information:

- (a) the number of detainees in the places of detention for which it is designated:
- (b) the treatment of detainees in those places of detention:
- (c) the conditions of detention applying to detainees in those places of detention.

29 National Preventive Mechanism's access to places of detention and persons detained

For the purposes of this Act, every person must permit a National Preventive Mechanism to have unrestricted access to —

- (a) any place of detention for which it is designated, and to every part of that place:
- (b) any person in a place of detention for which it is designated.

30 National Preventive Mechanism may conduct interviews

(1) For the purposes of this Act, every person must permit a National Preventive Mechanism to interview, without witnesses, either personally or through an interpreter, —

- (a) any person in a place of detention for which it is designated:
- (b) any other person who the National Preventive Mechanism believes may be able to provide relevant information.

(2) No person or agency who has provided information in good faith to a National Preventive Mechanism may, in respect of the provision of that information, be subject to any —

- (a) criminal liability:
- (b) civil liability:
- (c) disciplinary process:
- (d) change in detention conditions:
- (e) other disadvantage or prejudice of any kind.

(3) Subsection (2) applies regardless of whether the information provided to the National Preventive Mechanism was true.

(4) If requested by the National Preventive Mechanism, the person in charge of a place of detention must provide a safe and secure environment for the National Preventive Mechanism to conduct an interview with any detainee who is considered likely to behave in a manner that is —

- (a) offensive, threatening, abusive, or intimidating to any person; or
- (b) threatening or disruptive to the security and order of the place of detention.

Central National Preventive Mechanism

31 Designation of Central National Preventive Mechanism

The Minister may, at any time, by notice in the Gazette, designate a Central National Preventive Mechanism.

32 Functions of Central National Preventive Mechanism

(1) The functions of the Central National Preventive Mechanism, in relation to this Act, are to —

- (a) coordinate the activities of the National Preventive Mechanisms; and
- (b) maintain effective liaison with the Subcommittee.

(2) In carrying out its functions, the Central National Preventive Mechanism is to —

(a) consult and liaise with the National Preventive Mechanisms:

(b) review the reports prepared by the National Preventive Mechanisms under section 27(c) and advise the National Preventive Mechanisms of any systemic issues arising from those reports:

(c) coordinate the submission of the reports prepared by the National Preventive Mechanisms under section 27(c) to the Subcommittee:

(d) make, in consultation with all relevant National Preventive Mechanisms, any recommendations to the Government that it considers appropriate on any matter relating to the prevention of torture and other cruel, inhuman or degrading treatment or punishment in places of detention in New Zealand.

Miscellaneous provisions

33 Confidentiality of information

(1) Every person must keep confidential any information that is given to him or her in the exercise of that person's functions or duties under this Act.

(2) Despite anything in subsection (1), such information may be disclosed for the purpose of —

(a) enabling New Zealand to fulfil its obligations under the Optional Protocol:

(b) giving effect to this Act.

(3) Nothing in this Act prevents a National Preventive Mechanism or the Central National Preventive Mechanism from making public statements in relation to any matter contained in a report presented to the House of Representatives under section 27(c)(i) or section 36(1) that the National Preventive Mechanism or the Central National Preventive Mechanism considers is in the public interest.

(4) No information disclosed under subsection (2) or public statement made under subsection (3) may include information about an identifiable individual without that individual's consent.

34 Powers of National Preventive Mechanism

Where a National Preventive Mechanism has powers in relation to the exercise of any functions under any other Act, the National Preventive Mechanism has, in relation to the exercise of its functions under this Part, the same powers.

35 Protections, privileges, and immunities

Where a National Preventive Mechanism has protections, privileges, and immunities in relation to the exercise of any powers and functions under any other Act, the National Preventive Mechanism has, in relation to the exercise of its functions under this Part, the same protections, privileges, and immunities.

36 Publication of National Preventive Mechanism report

(1) As soon as practicable after receiving a report under section 27(c)(ii) the Minister must present a copy of that report to the House of Representatives.

(2) As soon as practicable after a report of a National Preventive Mechanism has been presented to the House of Representatives under subsection (1) or section 27(c)(i), the National Preventive Mechanism must —

(a) publicly notify where copies of the report may be inspected and purchased; and

(b) make copies of the report available to the public at the place set out in the public notification, on request, for inspection free of charge and for purchase at a reasonable cost.

37 This Part not limited by other Acts

Where an agency or person (including a National Preventive Mechanism) has investigative functions under any other Act not amended by Part 2 of the [Crimes of Torture Amendment Act 2006](#), that other Act does not limit the operation of this Part.

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