



Human Rights
Commission

Te Kāhui Tika Tangata

Monitoring places of detention

**First annual report of activities under the
Optional Protocol to the Convention
Against Torture (OPCAT) -
1 July 2007 to 30 June 2008**

COMMISSION OFFICES

Tāmaki Makaurau – Auckland

10th Floor, Tower Centre, Cnr Queen and Customs Streets
PO Box 6751, Wellesley Street, Auckland, 1141
Telephone +64 9 309 0874
Fax +64 9 377 3593

Te Whanganui ā Tara – Wellington

8th Floor, Vogel Building, 8 Aitken Street
PO Box 12411, Thorndon, Wellington, 6144
Telephone +64 4 473 9981
Fax +64 4 471 6759

Otautahi – Christchurch

Ground Floor, KPMG at Cranmer, 30-34 Cranmer Square
PO Box 1578, Christchurch, 8140
Telephone +64 3 379 2015
Fax +64 3 353 0959

Human Rights Commission InfoLine

0800 496 877 (toll free)
TTY (teletypewriter) 0800 150 111
Fax (09) 377 3593 (Attn: InfoLine)
Language Line, an interpreting service, is available.
Appointment with sign language interpreter is available.



4	Foreword	18	Children’s Commissioner
5	Introduction	18	Child, Youth and Family Residences
5	OPCAT	18	Approach
6	Implementation in New Zealand	19	Visits
9	Human Rights Commission	20	Key issues
9	Summary of activities	20	Response from Child, Youth and Family
11	Independent Police Conduct Authority	21	Inspector of Service Penal Establishments
11	New Zealand Police – detention facilities	21	New Zealand Defence Force detention facilities
12	Approach	21	Approach
12	Summary of activities	22	Summary of activities
13	Proposed visits 2008-2009	22	Proposed Visits 2008/09
14	Key issues	23	Summary of emerging issues
15	Ombudsmen	26	APPENDIX 1: Human rights standards
15	Health and disability places of detention	27	APPENDIX 2: Monitoring standards framework
17	Places of detention approved or agreed under the Immigration Act 1987	33	APPENDIX 3: Optional Protocol to the Convention Against Torture
17	Prisons	43	APPENDIX 4: Part 2, Crimes of Torture Act 1989
17	Youth Justice residences established under section 364 of the Children, Young Persons and Their Families Act 1989		
17	Visits		



Detention raises fundamental issues of human rights. A key reason for human rights protections is to mediate the exercise of state power over citizens. State power is at its greatest when citizens or others are detained by the State, and people in detention are extraordinarily vulnerable to abuses of that power. Furthermore, people in detention are drawn disproportionately from sectors of society that are already vulnerable.¹

Foreword

On 14 March 2007 New Zealand ratified the Optional Protocol to the Convention Against Torture (OPCAT). Ratification provides a significant and valuable opportunity to ensure that all places of detention in New Zealand are safe and humane environments that meet international human rights standards.

In accordance with OPCAT and statutory requirements, National Preventive Mechanisms (NPMs) must report annually on their OPCAT activities. This is the first such report, and covers the period to 30 June 2008. This collated report brings together the reports of the five designated OPCAT organisations, summarising their activities to date, and also aims to provide some background information on the OPCAT monitoring system. It outlines the role of each of the OPCAT bodies and the approach to implementation. A summary of activities undertaken during the 2007/08 year is provided, as well as some observations and key issues that have emerged.

While a number of formal preventive monitoring visits have taken place, 2007/08 has been a foundational year for the OPCAT monitoring system in New Zealand. Implementation of OPCAT will be an ongoing and evolving process, that will continue to be refined as practical experience of OPCAT monitoring is developed within New Zealand and internationally.

All of the domestic OPCAT mechanisms are committed to implementing OPCAT pragmatically and effectively, and are confident that doing so will strengthen the protection of the rights of people in detention and help to prevent their ill-treatment or abuse. OPCAT is a crucial element in the international framework for human rights and opening New Zealand to greater international scrutiny. Monitoring will give added impetus and greater priority to ensuring the safety of those in detention.

The preparatory work undertaken in this first year provides a solid basis for sound and effective monitoring.

¹ Human Rights Commission (September, 2004), *Human Rights in New Zealand Today/ Ngā Tika Tangata o te Motu*, Auckland: Human Rights Commission, at p174.

Introduction

OPCAT

The Optional Protocol to the Convention against Torture (OPCAT) is an innovative human rights instrument to assist States to meet their obligations to prevent torture and other forms of ill-treatment. 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 is an effective means of preventing ill-treatment and improving conditions of detention. The preventive approach aims to ensure that sufficient safeguards against ill-treatment are in place and that any problems or risks are identified and addressed.

“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

OPCAT establishes a dual system of preventive monitoring, undertaken by international and national monitoring bodies. A new 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.

“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.”³

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

³ 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.

Implementation in New Zealand

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

Any and all places of detention within New Zealand may be subject to OPCAT monitoring by these organisations. This includes prisons, court and police detention cells, children and young persons' residences, mental health and other medical institutions, aged residential care facilities, New Zealand Defence Force detention facilities and immigration detention centres.

New Zealand's designated NPMs are the Ombudsmen, the Independent Police Conduct Authority, the Children's Commissioner and the Inspector of Service Penal Establishments. The Human Rights Commission has been appointed to a co-ordination role as the designated Central National Preventive Mechanism.

The OPCAT designations were formalised by notice in *The New Zealand Gazette* on 21 June 2007.⁴ The Human Rights Commission was designated as the Central National Preventive Mechanism and four NPMs were designated to inspect and monitor specific categories of places of detention:

- The Ombudsmen – in relation to prisons, premises approved or agreed under the Immigration Act 1987, health and disability places of detention, and youth justice residences established under section 364 of the Children, Young Persons and Their Families Act 1989;
- The Independent Police Conduct Authority – in relation to people held in police cells and otherwise in the custody of the police;
- The Children's Commissioner – in relation to children and young persons in residences established under section 364 of the Children, Young Persons and their Families Act;
- The Inspector of Service Penal Establishments – in relation to Defence Force Service Custody and Service Corrective Establishments.

⁴ Notice number 2667 'Designation of Central National Preventive Mechanism' and 2668 'Designation of National Preventive Mechanisms', published on 21 June 2007, *New Zealand Gazette*, p 1816.

Available at: <http://online.gazette.govt.nz/>



NPM functions and powers under OPCAT

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

The minimum powers that 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 (Art. 20). NPMs must also be able to have contact with the international Subcommittee and publish annual reports (Art. 20, 23).

The State authorities are obliged, under Article 22, to examine the recommendations made by the NPM and enter dialogue regarding their implementation.

The amended Crimes of Torture Act enables the Minister of Justice to designate one or more NPMs as well as a Central National Preventive Mechanism 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 that NPMs 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 that there is co-ordination and consistency among multiple NPMs so that they operate as a cohesive system. Central co-ordination can also help to ensure that any gaps are identified and that the monitoring system operates effectively across all places of detention.

The functions of the Central National Preventive Mechanism (CNPM), set out in section 32 of the Crimes of Torture Act, are to co-ordinate the activities of the NPMs and to maintain effective 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;
- co-ordinate the submission of reports to the Subcommittee; and
- in consultation with NPMs, make recommendations on any matters concerning the prevention of torture and ill-treatment in places of detention.

⁵ OPCAT, Article 1

The first year of operation of the five organisations as OPCAT mechanisms has focused on the development of a monitoring programme, processes and measures, based on international human rights standards and a human rights approach.

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 therefore looked to international guidance material and the work of overseas inspection bodies as a valuable reference point from which to develop processes and standards appropriate to New Zealand. NPMs have undertaken considerable scoping work and engagement with relevant agencies to develop processes and standards that meet OPCAT requirements while being practical and workable in the New Zealand context. These will continue to be tested and refined as practical experience of OPCAT preventive monitoring is developed.

Each NPM has developed procedures applicable to each detention context. OPCAT visits may be announced or unannounced, and may be in-depth visits or shorter, specifically focussed visits. 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 will 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, and involves looking at:

- 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.

This first annual report briefly outlines the role of each of the OPCAT bodies and the approach to implementation so far. A summary of activities undertaken during the 2007/08 year is provided, as well as some observations and key issues that have emerged to date. Where formal preventive visits were commenced during the year, specific findings and visit reports are, at this stage, the subject of discussions between the relevant NPMs and detaining organisations. The preparatory work undertaken provides a firm basis for preventive visits to proceed in the coming year.

Human Rights Commission

The Human Rights Commission has been designated as the Central National Preventive Mechanism, which entails co-ordination 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 has a range of options as to how it can give effect to these functions including advocacy, co-ordination of human rights programmes and activities, carrying out inquiries, making public statements, and reporting to the Prime Minister on any matter affecting human rights – including 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

During 2007/08 the Commission, in its role as Central National Preventive Mechanism, has worked with the other designated NPMs towards developing a cohesive, human rights based approach to OPCAT implementation.

To assist NPMs with their planning and promote consistency of monitoring across all places of detention, the Commission provided information on OPCAT principles and requirements and international preventive monitoring processes.

The Commission also drafted a comprehensive set of standards and indicators, as the basis for each NPM to develop into monitoring tools specific to each particular type of detention facility. These standards draw on the international human rights standards and norms that apply to places of detention (and which are listed in Appendix 1). The Commission also utilised guidance material published by organisations such as the

Association for the Prevention of Torture (APT),⁶ and examined the inspection standards and reports of a range of other overseas inspection bodies.⁷

Using these as a basis, the NPMs have developed processes and standards specific to each type of detention facility. Although a single common monitoring template has not been possible – since considerable adaptation by NPMs has been necessary for each of the detention contexts – use of the same basic framework provides a level of consistency across the different contexts, and ensures that all monitoring is grounded in human rights standards. A summary of the core principles and standards that form the basis of this framework is attached as Appendix 2.

The Commission also hosted four meetings of NPMs between June 2007 and July 2008, as part of developing a cohesive system. These meetings provide an opportunity for OPCAT

⁶ For example, the APT's Monitoring Places of Detention: A practical guide, April 2004, Geneva: APT.

⁷ For example, the European Committee for the Prevention of Torture (CPT), Her Majesty's Inspectorate of Prisons for England and Wales, Her Majesty's Inspectorate of Prisons for Scotland, and the Office of the Inspector of Custodial Services of Western Australia.

organisations to update each other on progress, discuss emerging issues and exchange information and ideas. A meeting with representatives of civil society was also held in order to provide information on OPCAT, the role of NPMs and their activities to date, and to discuss ways that the monitoring bodies can best work cooperatively with civil society.

The Commission has also been monitoring with interest the information and reports that have been issued by the UN Subcommittee for the Prevention of Torture,⁸ as well as other OPCAT developments internationally. The Commission has written to the UN Subcommittee, outlining New Zealand's OPCAT system and inviting further contact or engagement as the UN Subcommittee considers appropriate. This annual report will also be provided to the UN Subcommittee.

As preparatory work is concluded and preventive monitoring gets under way in 2008/09 it is anticipated that the Commission's responsibilities in regard to reviewing NPM reports and addressing systemic issues will become more of a focus of the coming year's activities. Processes around reporting and in relation to the monitoring of implementation of recommendations, will also be areas of focus.

⁸ During the year the Subcommittee released its first Annual Report (May 2008), and has recently released its first visit report (September 2008).



Independent Police Conduct Authority

The Independent Police Conduct Authority (IPCA or the Authority) 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 the police where death or serious bodily harm has occurred. The IPCA has the discretion to investigate these incidents if it wishes.

The Independent Police Conduct Authority evolved from the Police Complaints Authority (PCA) which was established in 1988. The Independent Police Conduct Authority Act 2007 marked a major shift in the direction of the Authority starting 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.

Members of the Authority are appointed by the Governor-General on the recommendation of the House of Representatives. Justice Lowell Goddard is Chairperson of the Independent Police Conduct Authority and was appointed as the Police Complaints Authority in February 2007.

New Zealand Police – detention facilities

There are more than 400 police stations in New Zealand. Within these sites there are a total of 525 overnight cells and 38 holding cells. There are 474 cells in New Zealand Police stations that are open 24 hours.

Police in several locations also have a daily responsibility for the safe custody of prisoners on remand who cannot otherwise be accommodated in appropriate Department of Corrections facilities. The remand period between court appearances on occasions may extend to 10 days, which presents a particular challenge for police since police detention facilities are not designed for lengthy periods in custody.

Cell blocks are concentrated in the larger metropolitan centres. The Authority has prioritised the identification of which of these

might be 'hot spots' to be targeted for OPCAT visits as soon as possible. Clearly though, cells in the smaller remote areas will be equally important where surveillance and supervision are not as well resourced by the police.

Detention by police is much wider than the use of police cells. Ultimately the Authority will consider the detention process from the moment an individual's liberty is deprived e.g., in a home or on the side of the road; transported to a police station in a police vehicle; during the charge process; through to placement in a cell.

The Authority will also work closely with police when the design and construction of new or refurbished detention facilities is contemplated.



Approach

The New Zealand Government is committed to ensuring that the IPCA is sufficiently resourced to increase and develop its capability to independently carry out investigations into police conduct, policies and procedures. This commitment from Government is significant in the context of the future adequate resourcing of the requirement to report under the OPCAT.

The Authority currently has under review a strategy document which suggests a range of options for establishing an OPCAT visiting team, to include an appropriate balance of legal, investigative and medical skills.

International experience points to the advantage of having a balance between male and female members in a visiting team. In the case of police cells where there are known to be people from different ethnic backgrounds there is an advantage for the visiting team to reflect those groups in the composition and language skills of the team.

Although generally no more than three people are likely to be involved in any one visit, there may be occasions because of the objectives of the visit; what is already known about the police cells at the particular location; the number of prisoners held there; and the estimated duration of the visit when it is necessary to add one or more members. However, this is likely to occur only in exceptional circumstances, having regard to the need to reconcile the requirements of the visiting team with the recognition that too large a team may cause unnecessary operational disruption to police and those being detained.

Factors considered when determining the frequency and duration of visits include: the nature and size of the police station and cell block; the number and category of people held there e.g., overnight arrests, remand prisoners, juveniles, those with mental and/or physical

disabilities; the size of the visiting team; and other information already known about the police cells which may include a history of complaints and known problems.

The programme of visits to a particular police cell block may include a mix of longer, in-depth visits which are announced beforehand, with shorter unannounced ad hoc visits in between, the intention being to follow up on the issues raised during the earlier visit.

Because of the wide scope of measures to be considered it may not be possible to address all of them during every visit. For that reason the Authority will focus on specific matters for each visit.

International guidelines suggest that in-depth visits to higher risk police cells should be undertaken at least once each year with the real possibility of ad hoc visits in between. Such places to be visited should include cells in which it is suspected there are significant problems with ill-treatment or known to have poor conditions; a sample of police cells selected at random; cells with remand prisoners; or cells with a high concentration of vulnerable groups, such as young people.

Summary of activities

The Authority visited 25 police sites equipped with detention facilities throughout New Zealand for the year ended 30 June 2008. The number of individual cells inspected during those visits was well in excess of 50. The target for 2007/08 was 30 police cells. In addition, the Authority visited the Police Custodial Suite at Lewisham, England.



The site visits completed by 30 June 2008 were helpful in terms of gaining some understanding of the existing environment and operational protocols within police cells and custody facilities generally. Each visit in this first year under the OPCAT was conducted by the Authority Chair alone, as opposed to a formal inspection by a three or four-person Authority OPCAT team.

The Commissioner of Police has been briefed by the Authority and briefings with the Deputy Commissioner and senior police executive have been completed. Response from police to the requirements of the OPCAT and the Authority's role and requirements in that regard has been positive.

The Authority's overall approach is less about 'finger pointing' and laying blame, and more directed to working with the Commissioner and his staff to recognise where changes in police cells and the management of detainees in whatever police setting they find themselves are needed.

Data in relation to all complaints received by the Authority from people in police custody that might be categorised as incidents of torture or cruel, inhuman or degrading treatment or punishment has been collected and analysed this year. This data has helped to inform the Authority's planning and prioritisation.

Once existing custodial conditions have been fully established these will be assessed against international expectations in order to refine the final monitoring standards and visiting and reporting mechanism.

A detailed 18-page draft set of standards to be applied has been completed and is under review. The Authority favours use of the word 'standards' rather than 'indicators' in order to send a strong message to some police staff

who have more of a compliance mindset where detainees are concerned, rather than the broader human rights approach required under the OPCAT.

Templates for conducting visits and preparing visit reports have been prepared and are also under review.

Proposed visits 2008-2009

The Authority intends inspecting 30 police detention facilities during the year to 30 June 2009. A report to 30 June 2009 will be prepared on its observations, conclusions and recommendations with regard to detention facilities, to be submitted to Parliament and to the public.

The focus of each visit is likely to be upon the physical environment, health and safety, and police policies, practices and procedures and will be informed by visits completed in the year ended 30 June 2008 and from further analysis of complaints received from people detained in police cells or other detention facilities. Analysis carried out to date clearly indicates a number of 'hot spots' which will be targeted early in the year.

It is intended that the information gathered this year will enable the Authority to further refine its focus and to become more involved with police about the design and construction of new or refurbished detention facilities.

As resources become available the Authority will establish a small multi-disciplinary team in accordance with international guidelines.



Over the coming year the Authority will provide a high visibility to observing detention conditions; refine the assessment criteria and standards already prepared for observing detention conditions; take appropriate and swift action to report upon and commence activities for addressing serious abuses of detained persons; and continue to work closely with the Human Rights Commission as the Central National Preventive Mechanism to ensure New Zealand's responsibilities under the OPCAT are met.

Key issues

The fundamental issue for the Authority is the securing of appropriate resources to commence a programme of formal OPCAT visits in 2008/2009, building on the experience already gained from visiting police cells throughout the country.

The Authority is confident from its analysis of complaints data, the design of a comprehensive set of measuring standards, and the positive response from police to the prospect of OPCAT visits that the coming year has the potential to produce an accurate assessment of the extent to which police meet the OPCAT objectives and those situations where appropriate and timely action is required to prevent or address abuses of people detained in police custody.



Ombudsmen

The Ombudsmen have been designated as the NPM for prisons, immigration detention facilities, health and disability places of detention, and youth justice 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.⁹

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 Ombudsmen's NPM role encompasses four distinct types of detention setting, and scoping and planning has been undertaken for each of these. The Ombudsmen's Office already carry out regular visits to all prisons, and have been able to build on this experience to adapt and develop processes for preventive monitoring visits, (although OPCAT preventive monitoring of prisons will remain separate from complaints investigation work). Scoping the NPM role and visiting processes in relation to health and disability facilities has been a particular focus of activities this year, given the breadth and complexity of this area.

Health and disability places of detention

The Ombudsmen have begun their role as the NPM for health and disability places of detention for those people detained under:

- the Mental Health (Compulsory Assessment and Treatment) Act 1992;

- the Intellectual (Compulsory Care and Rehabilitation) Act 2003;
- the Criminal Procedure (Mentally Impaired Persons) Act 2003; and
- the Alcoholism and Drug Addiction Act 1985 in hospital and community based facilities.

The Ombudsmen have also begun considering the level to which they will become involved in any other facilities where persons are detained against their will under the Protection of Personal and Property Rights Act 1998 (such as non-government organisations providing treatment and care).

The Ombudsmen have engaged in a process of providing information about their role and functions to related professional groups providing services for those detained in health and disability services such as Mental Health Managers, the Royal College of Psychiatrists and the National Residential Intellectual Disability providers group.

⁹ 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); and prisoner transport (2007).

During this past year introductory visits were made to half of the District Health Board areas visiting a range of inpatient, forensic, older persons', intellectual disability and addictions services. At the time of writing half (10) of the District Health Board areas had been visited with the remainder scheduled before the end of the first quarter of 2008/09.

The Ombudsmen have customised an international monitoring template, both for use in the New Zealand context and specifically for the health and disability facilities falling within the Ombudsmen's designation. By the end of the first quarter of 2008/09 the Ombudsmen expect to have had an opportunity to validate the template.

As general principles of engagement the Ombudsmen are committed to avoiding duplication of functions and reporting undertaken by other review or monitoring agencies within this sector and therefore intend to make use of existing information where possible.

There are some general observations based on visits to date regarding potential issues that will need to be followed through in the next reporting period:

- While there seems to be sufficient information already in existence to assist the Ombudsmen's role as a NPM in this sector, agreement was unable to be reached with the Ministry of Health regarding access to this information during the reporting period.
 - Some of the facilities visited are not suitable for the purposes they are being used for. If this is confirmed once formal visits have taken place, it will likely be the Ombudsmen's view that any intended therapeutic outcomes will be diminished because of the poor environments, despite the excellent skills, care and treatment provided within them.
- On the other hand, it is already apparent from visits that some of the recent 'purpose-built' mental health units do seem to be, on the surface at least, more conducive to the therapeutic treatment concept, while at the same time maintaining an appropriate level of security where required.
- It is apparent that at the time the Intellectual (Compulsory Care and Rehabilitation) Act 2003 was passed, New Zealand did not have a sufficient quantity of specialist trained staff to provide the services envisaged. The Ombudsmen note that both District Health Boards and non-government organisations are investing as quickly as possible in work based training and skill enhancement. Even so, the number of specialist staff available will continue to be scarce for some time to come.
 - A number of clinicians have voiced concerns that some people are being treated in a more restricted environment (in patient services) than their circumstances require for extended periods of time because of a lack of community based options suitable for those people. This applies particularly to people who also have an intellectual disability.



Places of detention approved or agreed under the Immigration Act 1987

A preliminary familiarisation visit has been made to the Immigration facility at Mangere in Auckland. However, it is only the conditions and treatment of asylum-seekers detained at this facility that will be the subject of monitoring by the Ombudsmen in their role as NPM. What has not been fully scoped yet are the detention facilities at airports and other border terminals, where illegal immigrants and others detained by Immigration, Customs, and the Ministry of Agriculture and Forestry (MAF) might be held.

Prisons

Familiarisation visits to some prison sites that have At Risk Units or Special Treatment Units (for prisoners with mental health issues) are expected to be completed in the first quarter of 2008/09. Visits to prisons generally will also commence in the latter half of 2008. The monitoring template has been modified to best suit New Zealand's prisons, but it is expected that as the programme of visits gets under way, further modification to the templates will be made as necessary.

It is not expected that there will be any issues around obtaining information and documentation from Department of Corrections' sites or its national office, nor is it expected that there will be any issues surrounding access to the various sites as and when required.

Youth Justice residences established under section 364 of the Children, Young Persons and Their Families Act 1989

The Ombudsmen are reviewing how to best exercise the NPM role in respect of facilities established under section 364 of the Children, Young Persons and their Families Act 1989. Currently the Ombudsmen are designated to monitor and review youth justice residences. The Office of the Children's Commissioner also has this designation. It is noted that children and young people are also compulsorily detained in residential care facilities.

Visits

Scoping work to date (actual visits to sites completed as at 30 June 2008):

Immigration facilities	1
Mental health facilities	41
Child, Youth and Family	0
Prisons	1
Total site visits	43

The first full preventive monitoring visits began in September 2008.



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.

The Office of the Children's Commissioner (OCC or the Office) is an Independent Crown entity, operating under the Children's Commissioner Act 2003. The Children's Commissioner has a range of statutory powers to promote the rights, health, welfare, and wellbeing of children and young people from birth to 18 years. These functions are undertaken through advocacy, public awareness, consultation, research, investigations and monitoring. The Commissioner's role also includes specific functions in respect of monitoring the activities of New Zealand's statutory care and protection agency for children (Child, Youth and Family). The Commissioner also undertakes systemic advocacy functions and investigates particular issues compromising the health, safety, or wellbeing of children and young people.

The Children's Commissioner is appointed by the Governor-General on the advice of the Minister for Social Development and Employment.

Child, Youth and Family Residences

Child Youth and Family (CYF) have established nine residences under Section 364 of the Children, Young Persons and their Families Act (the CYPF Act) – three Youth Justice residences and six Care and Protection residences.

OCC's role as NPM overlaps with its statutory responsibility to monitor the policies and practices of CYF generally.

Approach

This year, much of the focus of the OCC as an NPM has been in planning for preventive monitoring.

The Office has established an operational policy document to guide the OPCAT team in meeting its obligations. The policy document identifies the standards and measures that will be applied during a visit.

Specifically the visits review:

- Treatment: identifying any incidents of torture and ill-treatment, the use of isolation and of 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.

This year the Office established a process with Child Youth and Family on the nature, frequency and duration of the visits and have agreed on a timetable of visits for the year ahead. Four OPCAT visits are planned for 2008/09 (although further unannounced visits may be undertaken, should any issues of concern arise). OCC has met regularly with senior CYF officials responsible for residential care (including all residence managers) keeping them abreast of OPCAT processes and standards and the procedure for preventive monitoring.



No new funding was received from Government to undertake these new responsibilities. Funds from existing resources have been allocated to appoint a contractor to work with the staff from the Office to complete and report on visits.

Visits

Two CYF facilities were visited towards the end of 2007/08.

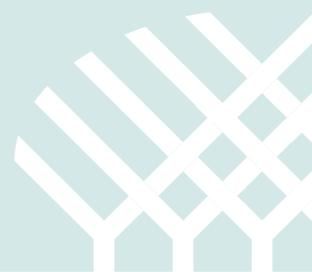
Within CYF residences there are a number of processes that are in place to ensure that children and young people are not exposed to torture, brutality or inhumane treatment. Most of these are prescribed by the Children, Young Persons and their Families (Residential Care) Regulations (1996). The key protective measures within the Regulations are summarised as specified rights to be accorded to children and young people; limitations on powers of punishment and discipline; and processes for inspections and review including the functions of an independent Grievance Panel. CYF audits its own compliance against these Regulations. In turn, these audit reports can assist OCC to understand how OPCAT measures are being met and what steps are taken to mitigate any issues identified in these audits.

The measures to ensure that these rights are being applied correctly rely on the following:

- Selection and training of appropriate staff who are effective in engagement and work with children and youth;
- Staff conducting themselves in pro-social, ethical ways in their interaction with children and youth;
- Supervision and oversight of these staff to enhance their knowledge and skills and to ensure work with the children and young people is purposeful and related to the treatment objectives identified as the reasons for the care or treatment offered;

- Establishment and reviews of personal plans for all the young people;
- Documentation for any limits imposed on young persons;
- Legal status for being held in the residence;
- Periods of exclusion from the group be recorded in:
 - Daily logs
 - Timeout admission (incident report)
 - Secure admission (incident report). Those in the secure unit that are subject to further limitation such as being confined to their room require additional documentation;
- Reviews of the previously mentioned documents by a supervisory/management level beyond the staffing level that the actions were initiated by;
- Monthly National Office (CYF) reporting on regulation compliance by the site Residential Manager;
- Visibility and access to the independent 'Grievance Panel' and grievance process;
- Residential Inspections by the CYF Audit Team (Social Work Quality Assurance);
- National Office follow-up and action on any issues arising from the various reporting mechanisms.

All these measures are mandated by the Regulations and have been operationalised by the development of Standard Operating Procedures within a National Code of Practice of Child, Youth and Family.



As part of the preparation for the NPM site visits there was a review of relevant reports that had been completed since the last site visit by OCC. They included:

- The CYF Residential Audit of Compliance with the Regulations undertaken by the Social Work Quality Assurance Team;
- Quarterly grievance panel reports;
- Documentation around the application of the Regulations as defined in Standard Operating Procedures of CYF.

During the NPM visits to the two Care and Protection residences selected this year, there were discussions with children and young people, staff, management and the Grievance Panel. The visits took three days and required extensive verification of the processes that are in place to ensure that children and young people are not exposed to torture or ill-treatment. A comprehensive report on both residences was completed, reporting on their provision of protective factors. A summary of the key findings of these visits is provided below.

Key issues

Both residences visited showed substantial compliance with measures to ensure that children and young people are not exposed to torture, brutality or inhumane treatment.

The visits to the residences have identified the following areas for improvement:

- Clearer recorded rationale for times when young people are confined to their rooms, while detained in secure care;
- Policy and procedure around residents' opportunity for exercise and activity while in their rooms in secure care needs greater clarity;
- Maintaining staff accreditation for the use of restraint;
- Staff recruitment and training to meet specialist needs presented by clients especially those with identified mental health needs;
- Further discussions with young people to clarify the distinction between a complaint and a grievance;
- The need for an expanded recruitment strategy to reduce the number of residential social worker vacancies;
- The role and function of the Grievance Panel needs to be further clarified and operationalised;
- Grievance outcomes that are not signed by the young person being followed up by the Grievance Panel.

Response from Child, Youth and Family

CYF management have been most helpful in facilitating access to the residential facilities, the staff, the residents and to written documentation. The OPCAT visits have identified a number of issues specific to each residence. All of the issues that have been identified have been raised, in a written draft report, with the management of each unit. CYF has taken the opportunity to discuss the report with the NPM before the report was finalised.

A final report on these visits has been provided to CYF and, at the time of writing this report, a written response is yet to be received.



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).

While the wording in the original NPM designation refers to the Visiting Officer system provided under the Armed Forces Discipline Act 1971, the transfer of the role to the ISPE under the Court Martial Act 2007 ensures that the NPM is independent of the Defence Force. This represents a significant development, for the first time providing for regular external monitoring of Defence Force detention facilities.

New Zealand Defence Force detention facilities

The Services Corrective Establishment (SCE) is located in Burnham Military Camp, south of Christchurch, and has the capacity to accommodate 12 people. 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.

Approach

The ISPE arrives 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 to the Commandant of the SCE following the visit and, in addition, if there is any significant concern identified, the ISPE would report these directly to the Chief of Defence Force.

The standards referred to by the ISPE in the course of his visits include treatment, protection measures, material conditions, activities, health services and staff.

Visits to date have been carried out by the ISPE alone. The ISPE currently has no staff, but has the capacity to second people to assist meeting OPCAT objectives.



Summary of activities

Two preventive monitoring visits to the SCE have been completed. The cells at RNZAF Base Auckland, Waiouru Military Camp and Burnham Camp have also been visited.

The ISPE has been impressed to date with the level of co-operation at all levels of the NZDF in the endeavours to comply with the obligations under OPCAT. SCE is a fairly modern facility, with a professional staff of Non Commissioned Officers. All detainees interviewed to date have reported firm but fair treatment and there has not been any indication at all of human rights violations. The ISPE has been satisfied, from his observations to date, regarding the treatment and conditions of detention and the measures in place to prevent torture and ill-treatment.

Proposed Visits 2008/09

It is intended to complete up to eight OPCAT visits to SCE in the 08/09 year. Further visits to camp and base holding cells will also be arranged.



Summary of emerging issues

The first year of operation of the OPCAT mechanisms has focused on developing the processes and systems to carry out these roles. Few formal preventive monitoring visits have taken place within this period, and accordingly, specific substantive findings concerning the conditions and treatment in places of detention are limited at this stage.

Issues that have emerged from activities and discussions to date, and which will continue to inform ongoing work, include the following:

Issues for particular groups

There are a range of issues across the various detention contexts relating to the appropriate provision for, and specific attention to, the rights and special needs of particular groups. These groups include children and young people, asylum-seekers, older people, and people with physical, mental or intellectual disabilities.

The high representation of Māori and the growing numbers of women in detention, and how their rights and needs are addressed, are also ongoing issues of note.

Facilities

Decent living conditions are essential for the preservation of human dignity in places of detention, as well as for detainees' physical and mental health. 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. These issues also need to be considered when new facilities are being planned and designed.

Staff

International human right standards emphasise the crucial role of staff, "since it is on their integrity, humanity, professional capacity and personal suitability for the work that the proper administration of the institutions depend".¹⁰ Adequate staffing levels and training are essential for the security, safety and wellbeing of both staff and of those in their custody. Issues have been flagged around the availability of specialist staff in certain areas, as well as the need to ensure that all staff are well equipped to deal appropriately with detainees – including particular groups such as children and young people, asylum-seekers, and people with physical, mental or intellectual disabilities.

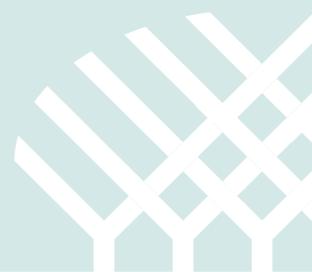
Control and sanctions; use of force and restraint

International standards recognise the need for order and discipline to be maintained in places of detention, but require that this is done "with no more restriction than is necessary for safe custody and well-ordered community life" and with "humanity and with respect for the inherent dignity of the human person".¹¹

There appear to be some issues regarding the use of measures that are overly restrictive. Some of these issues point to the need for appropriate resources and facilities in order to ensure that suitable responses are available and that restrictive measures are not extended beyond their appropriate use. These issues also highlight a need to embed a human rights culture in places of detention in order to better ensure that human rights obligations are considered when deciding upon the appropriate response to a given situation or problem.

¹⁰ United Nations Standard Minimum Rules, Rule 46

¹¹ International Covenant on Civil and Political Rights, Article 10



Torture and ill-treatment can take a variety of different forms, including in some circumstances, the improper use of force, restraint or isolation. Recourse to such measures, and the safeguards around their use are therefore of ongoing interest in terms of OPCAT monitoring.

During discussions with members of civil society, concerns were raised regarding the introduction of the taser in New Zealand, noting recent comments regarding tasers made by the United Nations Committee Against Torture.¹²

Administrative and resource issues

Some observations regarding the implementation of OPCAT to date are outlined.

Awareness and co-operation

The positive response and level of co-operation that NPMs have received from detaining authorities and other organisations is encouraging, and indicative of a commitment to ensuring that New Zealand detention facilities operate to a high standard and meet human rights requirements.

Given the early stage of OPCAT implementation, varying levels of awareness of OPCAT and its requirements are to be expected to some extent. A limited awareness of human rights generally, and their lack of integration into policy and practices, is also apparent in some government agencies and departments. The ongoing implementation of OPCAT provides an opportunity to build understanding and respect for human rights and responsibilities in places of detention and to promote the integration of human rights into the day-to-day practices of detaining agencies.

As well as NPMs' engagement with relevant agencies, the Ministry of Justice has also held discussions with agencies and is developing guidelines for government departments on their OPCAT obligations. It is anticipated that dissemination of these guidelines will assist in promoting understanding of, and compliance with, OPCAT requirements.

Central to these requirements is the need to ensure that NPMs are provided with all relevant information concerning detention facilities and the treatment of people who are deprived of liberty; as well as access to all places of detention (and all parts of those facilities) that they may decide to visit.

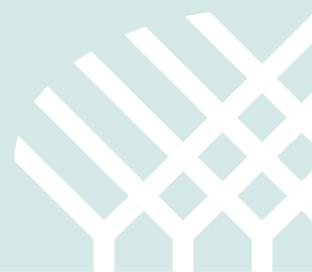
Resources

When preparing for OPCAT ratification, the need for NPMs to be adequately resourced was considered by government, along with the need for legislative changes in order to meet OPCAT requirements. Budgetary allocations were made on the basis of estimates of the additional resources that would be needed.

The preparatory work undertaken by NPMs during the year has provided a clearer picture of the resources required to effectively fulfil their role. While NPMs have taken a pragmatic approach to implementing their roles as effectively as possible within the resources available, it is clear that some additional resources are needed.

The IPCA in particular, requires additional resources in order to commence its monitoring programme.

¹² In its Conclusions and recommendations of the Committee against Torture in relation to the fourth periodic report of Portugal (CAT/C/PRT.CO/4, 19 February 2008 at paragraph 14), the Committee expressed concern that the use of TaserX26 weapons, provoking extreme pain, constituted a form of torture.



OPCAT designations

The preparatory work and experiences of the NPMs to date has highlighted some issues in relation to the designations as currently worded, that could usefully be clarified or corrected.

The dual designation of both the OCC and the Ombudsmen as NPMs in relation to CYF residences, recognised that both organisations had existing roles in relation to CYF and provided for supplementary protection should any gaps in coverage arise.

Given the scope of the OPCAT roles and the resources presently available to carry these out, NPMs are very conscious of the need to ensure that OPCAT systems are as streamlined and efficient as possible. Resources and focus should be directed at key areas of priority, and any unnecessary duplication of functions avoided, while also ensuring that appropriate monitoring coverage exists across all places of detention.

Ongoing discussions between the OCC and Ombudsmen are examining how the shared jurisdiction should best be implemented, and whether any amendments to the designations are necessary.

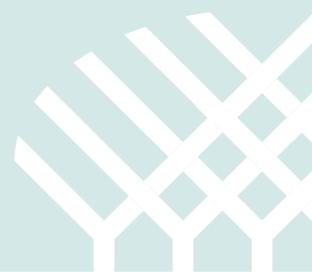
A further issue that could usefully be clarified is the wording in relation to CYF residences. The designation relates to residences established under section 364 of the CYPF Act, but specifically refers to “youth justice residences”.

Residences established by CYF under s 364 include both Care and Protection and Youth Justice residences, and both clearly fall within the OPCAT and Crimes of Torture Act definitions of places of detention.¹³ Specific inclusion of Care and Protection residences in the designation is needed to ensure that designations clearly reflect the OPCAT requirement that all residences where children and young people may be detained are subject to OPCAT monitoring.

As NPM for health and disability facilities, the Ombudsmen have begun scoping the extent of their role as it relates to people detained under the Protection of Personal and Property Rights Act. Further consideration may need to be given to whether specific or additional designations are needed to ensure that there is appropriate OPCAT monitoring coverage of aged residential care facilities.

It may also be useful to amend the wording of the designation relating to Defence Force facilities to reflect the further steps that have been taken since OPCAT ratification to ensure that the NPM is independent of the Defence Force, and that as a result the role is carried out by the ISPE.

¹³ OPCAT, Article 4; section 16, Crimes of Torture Act 1989



APPENDIX 1: 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 (BPTP)
 - 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 Institutions¹⁴ (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)

¹⁴The 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 2: Monitoring standards framework

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

Issues	Standards	Relevant international references ¹⁵
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>	<p>ICCPR 7 CAT 1, 2, 16 CRC 37 CPRD 15</p> <p>BPP 6 SMR 31 CCLEO 5</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>	<p>Force:</p> <p>SMR 54 BPUF 9, 15,16 CCLEO 3</p> <p>Restraint:</p> <p>SMR 33-34 RPJDL 64</p>
Solitary confinement	<p>Use of conditions amounting to solitary confinement is limited and of short duration, 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>	<p>BPTP 7 GC20 6 SMR 32</p>

¹⁵ See Appendix 1 for full titles of the international human rights instruments; numbers refer to the relevant article, paragraph or rule.

Issues	Standards	Relevant international references ¹⁵
Protection Measures		
Information	People in detention are effectively informed of their rights and obligations and about the operation of the place of detention	BPP 13 SMR 35
	Persons under arrest are informed of the reasons for their arrest and any charges, and of their rights Questioning is conducted in accordance with Minimum Interrogation Standards	BPP 10, 13 MIS
Disciplinary procedures	Disciplinary procedures are set out in clear rules, and these are effectively conveyed to detainees and staff Rules and sanctions are lawful, reasonable, and proportionate, and are fairly and consistently applied 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	BPP 30 SMR 27-32
Complaint and inspection procedures	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 Complaints are dealt with in a fair, timely, and effective manner Inspection mechanisms are able to visit regularly, and people in detention are able to communicate freely and confidentially with inspection bodies	BPP 29 SMR 55 BPP 33 SMR 35-36

Issues	Standards	Relevant international references ¹⁵
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> <p>Young people are detained separately from adults</p> <p>Accused persons are detained separately from convicted persons</p> <p>Men and women are detained separately</p> <p>Attention is given to the specific needs of particular groups – such as children and 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>	<p>ICCPR 10(2) GC21 9 GC20 13</p> <p>SMR 8, 85 RPJDL 29 BPP 8</p>
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	<p>BPP 12 SMR 7 GC20 11</p>
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>	<p>SMR 9-14 (Accommodation), 26</p>

Issues	Standards	Relevant international references¹⁵
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>	SMR 12-14, 15-16 (personal hygiene), 17-19 (clothing and bedding)
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>	SMR 20, 26 JPJDL 67

Issues	Standards	Relevant international references ¹⁵
Activities and access to others		
Administration of time; availability of activities (work, education, religion, leisure)	<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 wellbeing, 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>SMR 21, 65-66 RPJDL 47, 32 BPTP 8 SMR 71-76 RPJDL 43-46 SMR 77-78 BPTP 6 RPJDL 38-42 BPP 28 SMR 21, 40, 78 RPJDL 32, 47 ICCPR 27 SMR 41-42 BPTP 3 RPJDL 48</p>
Access to others	<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>	<p>ICCPR 23 BPP 15, 19 SMR 37, 92 RPJDL 59</p> <hr/> <p>ICCPR 9, 14</p>

Issues	Standards	Relevant international references ¹⁵
Health 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 medical examination on admission</p>	<p>SMR 22-26, 82-83 BPTP 9 BPP 24-26 CCLEO 6</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 and secure environment where human rights are respected</p>	<p>SMR 46-54 RPJDL 81-87 GC20 10</p>

APPENDIX 3: 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.

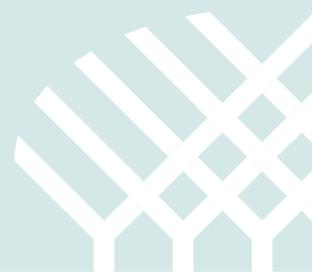
Article 15

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.

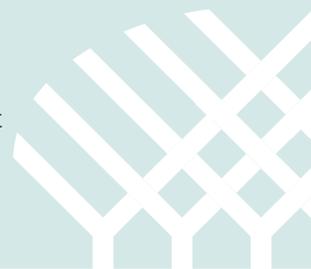
Article 36

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 4: 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.
- (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
 - (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).

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:

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) co-ordinate 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) co-ordinate 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.





