

Monitoring Places of Detention



Human Rights
Commission
Te Kāhui Tika Tangata

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

1 July 2010 to 30 June 2011



Office of the  Ombudsmen
Te Tari -o- Ngā Kaitaki Mana Tangata

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ISSN: 1179-531X (Print)

ISSN: 1179-5328 (Online)

Published February 2012

Auckland, Aotearoa New Zealand

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Introduction

This is the fourth report of the New Zealand organisations designated as National Preventive Mechanisms (NPMs) under the Optional Protocol to the Convention against Torture (OPCAT). The organisations are the Children’s Commissioner, the Independent Police Conduct Authority, the Office of the Ombudsmen, and the Inspector of Service Penal Establishments, and the Central NPM, the Human Rights Commission.

While the process of OPCAT implementation is one of ongoing evolution and development, the New Zealand preventive mechanisms continue to record a range of positive impacts and practical improvements as the result of monitoring. In the last year, these have included:

1. changes to policy, training and custodial management processes and practice to strengthen protections against death in police custody
2. progress in addressing long-standing issues regarding cell temperatures in older prisons
3. measures to improve the quality of food
4. substantial improvements in one facility as the result of a visit to address bullying behaviours, poor relationships, ineffective grievance procedures, and the physical environment.

Key issues have emerged for focus by NPMs over the next monitoring year. These are identified in the last section of the report and build on work undertaken this year in relation to older facilities, quality of food, access to mental health care and the regime and treatment in “at risk units”.

Adequate resourcing to monitor the full array of detention facilities covered by OPCAT has also emerged as an issue. OPCAT applies to any facility where persons are, or may be, deprived of their liberty by a public authority. Although this includes institutions such as aged care facilities and residential care homes where people are required to live because of conditions such as dementia, NPMs are not currently resourced enough to monitor the full array of facilities. This issue will therefore be explored over the next year for the purpose of ensuring all in detention facilities in New Zealand are assured the protections afforded by OPCAT.

This year has seen greater use of unannounced visits. These visits are an important element of the OPCAT system because they demonstrate how detention facilities are fully

open to independent scrutiny and enable NPMs to gain a full and accurate picture of the detention situation.

As well as requiring a programme of visits to places of detention to assess conditions and treatment first-hand, OPCAT mandates a preventive approach involving scrutiny of broader factors such as policy, legal and institutional frameworks. This year a number of research and evaluation activities were undertaken, including progression of a joint thematic review of issues relating to children and young people in police custody; and research into human rights and prisons.

NPMs continue to develop and strengthen their own practices. Increased collaboration and cooperation amongst NPMs has been particularly valuable. Joint activities among NPMs have been a helpful way of sharing experience and developing good practice. NPMs participation in each others’ visits has been used to good effect to augment the very small visiting teams each organisation continues to work with. In the coming year, NPMs will continue to explore ways of working together in order to enhance the effectiveness and impact of preventive monitoring.

The ongoing development of the New Zealand OPCAT system continues to be assisted through engagement at the international level. The election this year of the Independent Police Conduct Authority (IPCA) Chair, Justice Lowell Goddard, to the international Subcommittee responsible for OPCAT, provides an invaluable opportunity for further international engagement and learning from international experiences and best practice.

New Zealand’s early ratification and implementation has demonstrated New Zealand’s commitment to strong human rights protections. Activities under OPCAT have contributed to practical improvements in detention. NPMs remain committed to working with government agencies to ensure the continuance of humane standards in all detention facilities in New Zealand.

Human Rights Commission

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

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

The Commission's functions may be undertaken through a range of activities, including advocacy, coordination of human rights programmes and activities, carrying out inquiries, making public statements, and reporting to the Prime Minister on any matter affecting human rights.

This includes the desirability of legislative, administrative or other action to better protect human rights. The Commission also administers a disputes resolution process for complaints about unlawful discrimination.

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

Summary of activities

In its role as the Central National Preventive Mechanism, the Commission has liaised with NPMs, hosted two round table meetings of the OPCAT organisations and participated in a number of other activities.

The meetings with OPCAT organisations have provided the opportunity for sharing information and experiences, discussing challenges and identifying cross-cutting issues. They have helped inform the ongoing refinement and development of OPCAT processes and practice.

The Commission has participated in NPM visits to detention facilities and in joint activities such as the thematic review into children and young people in custody currently being undertaken with the Independent Police Conduct Authority and Children's Commissioner.

The Commission engaged with stakeholders internationally and has responded to invitations to share information and experiences in international forums and events focusing on OPCAT implementation and detention monitoring. These events have provided a valuable opportunity to draw on overseas experiences – particularly as OPCAT implementation continues to expand and gain momentum internationally.

During the year the Commission has undertaken significant human rights research which will contribute to the Commission's ongoing OPCAT monitoring activities. The report, *Human Rights in New Zealand 2010 – Ngā Tika Tangata o Aotearoa*, identifies priority areas for action over the next five years including issues relating to people in detention.

The Commission contracted criminologist Dr Elizabeth Stanley to review and update previous research on human rights issues in New Zealand prisons. The report identified a number of positive practices and improvements occurring in prisons between 2004 and 2010 evidenced particularly in training and employment initiatives, new drug treatment units and the expansion of rehabilitation programmes. It emphasised the importance of human rights compliance to both prison security and prisoner rehabilitation.

However, a number of concerning issues were also identified. These concerned the use of long lock-down periods, physical conditions in some facilities, and barriers to prisoners accessing appropriate levels of physical and mental health services on a timely basis. The rate at which detention is used in New Zealand was identified as an overarching challenge.

Going forward

In the next year, the Human Rights Commission will continue its coordinating functions as the Central National Preventive Mechanism. It will facilitate more opportunities to engage with civil society around detention matters and will facilitate NPM work on progressing the issues of concern identified through monitoring and research.

Children's Commissioner

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

The Office of the Children's Commissioner (the Office) monitors activities under the Children, Young Persons and Their Families Act 1989 (CYPFA), undertakes systemic advocacy functions and investigates particular issues with potential to threaten the health, safety, or well-being of children and young people.

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

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

Context

Child, Youth and Family are responsible for nine residences for children and young people, established under s364 of the CYPFA. These include four care and protection residences, four youth justice residences and a specialist residence for young men who have displayed sexually inappropriate behaviour.¹

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

Summary of activities

This year, the Office met regularly with the general manager at Child, Youth and Family responsible for

residential care, keeping them informed of the NPM processes, standards and the procedure for preventive monitoring.

A schedule of visits is established at the beginning of each year, ensuring each of the s364 residences are visited once every two years. The Commissioner also has separate responsibilities to visit s364 residences as part of his general monitoring role. Information gathered from the Commissioner's general monitoring visits can raise issues to be followed up at a later stage during NPM work. During the 2010/11 financial year, the Office carried out its first unannounced visit. The Office continues to conduct at least one unannounced visit to a s364 residence during each financial year.

The senior advisor leads all NPM visits and is now always accompanied by an NPM inspector from another agency. This cross-fertilisation continues to be worthwhile, with benefits extending to a better understanding of the role and improved procedures for collecting information, interviewing, analysis and reporting.

Prior to each NPM visit, the Office checks:

- Child, Youth and Family's annual residential audit of compliance with the Children, Young Persons and Their Families (Residential Care) Regulations 1996
- quarterly grievance panel reports.

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

- **Treatment:** identifying any incidents of torture, brutality or inhuman treatment, the use of isolation and/or of force and restraint
- **Protection measures:** provision of information such as complaint, inspection, and disciplinary procedures and how such incidents are recorded
- **Material conditions:** accommodation, lighting and ventilation, personal hygiene, sanitary facilities, clothing and bedding, and food

¹ The day-to-day running of which is undertaken by Barnardos.

- **Activities and access to others:** contact with family and the outside world, outdoor exercise, education, leisure activities, and religion
- **Health services:** access to medical care
- **Staff:** conduct and training.

During the 2010/11 financial year, the Office undertook five inspections. It visited Te Oranga (Care and Protection) in September 2010; Epuni (Care and Protection) in November 2010; Korowai Manaaki (Youth Justice) in March 2011; Whakatakāpokai (Care and Protection) in April 2011; and an unannounced visit to Lower North (Youth Justice) in April 2011.

During the visits, there were discussions with children and young people, staff, management, the grievance panel and external stakeholder agencies. Each visit took three days² and required extensive verification of processes to ensure children and young people are not exposed to torture, brutality or inhuman treatment. A comprehensive report was completed following each visit.

Key findings for 2010/2011

Within s364 residences, processes are in place to ensure children and young people are not exposed to torture, brutality or inhuman treatment. Most of these processes are prescribed by the Children, Young Persons, and Their Families (Residential Care) Regulations 1996. Child, Youth and Family audits compliance against these regulations annually.

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

The Office found that most residences complied with their obligations under OPCAT to ensure children and young people are not exposed to torture, brutality or inhuman treatment. One residence received an initial failure due to the nature of the relationships between staff and residents, including unaddressed bullying, and the quality of the

facilities and food. Child, Youth and Family facilitated a return visit approximately six months later where the Office was able to report on a considerable improvement and re-evaluated the residence as compliant. During the visits to all of the s364 residences, a number of issues were identified as areas where improvements could be made. These were reported back to Child, Youth and Family and Barnardos who have given an assurance that each is being addressed. Monitoring will continue during next year's visits.

BMS rewards and consistency

Child, Youth and Family have introduced a national Behaviour Management System (BMS). The new system is complex and many of the young people spoken to had found it difficult to understand how their 'level' is calculated. The young people also said the rewards on offer do not provide an incentive to improve their behaviour. Child, Youth and Family are working on developing a library or suite of incentives staff can use to negotiate with young people to individualise their incentives.

The gap between the care and clinical teams in residences

Child, Youth and Family have completed a great deal of work on implementing a stronger therapeutic model within the s364 residences. This has improved the individualised assessments of the children and young people. However, there remains a silo between the care and clinical teams within the s364 residences that could be reduced. This will allow for a greater focus on transition planning and improving outcomes for children and young people.

Food and facilities

There has consistently been a gap between the s364 residences that have undergone a refresh as part of a national upgrade process. Those that have undergone refurbishment are light and welcoming, and provide positive child-friendly spaces. Those yet to be done do not provide an environment conducive to achieving positive therapeutic change.

2 With the exception of the unannounced visit which took the form of a review visit and lasted one day.

Providing a nutritionally balanced meal is challenging and there have been some inconsistencies across all of the s364 residences. Child, Youth and Family are currently working on a national menu that will provide a consistent approach to nutrition.

Recording systems

Several instances were noted where Child, Youth and Family failed to record the good work being undertaken in s364 residences. Likewise, a number of examples were found of poor recording following incidents and in key decision-making in secure care. Reviews of s364 residential recording have been undertaken following the recommendations from these visits.

Resources

The Office continues to undertake its NPM responsibilities with no additional funding and meets the number of visits suggested in international guidelines.³ It finds the regime in each s364 residence can change quickly depending on the make-up of staff and residents at each facility. If the Office received additional funding, it could undertake a greater number of visits further strengthening the preventive focus of these visits.

Review of the detention of young people in police cells

Work continues on the Office's review of the policies and practices in relation to the care of young people detained in police cells. This is being carried out in conjunction with staff from the Independent Police Conduct Authority and the Human Rights Commission. Although this is not work the Office is currently gazetted to do, it is concerned young people in police cells are a group needing the specific attention of a NPM. Terms of Reference for this project have been developed and interested parties have been invited to make submissions on this work.

Going forward

During 2011/12, the Office will continue to undertake all NPM visits in conjunction with other NPM agencies and complete reports. At least four visits are planned for 2011/12 and, in addition, one unannounced visit will be undertaken.

³ International guidelines suggest that each facility must be visited at least once every four years. It is suggested that facilities housing children and young people are visited more frequently.

Independent Police Conduct Authority

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

The Authority is an independent Crown entity, which exists to ensure and maintain public confidence in the New Zealand Police. The Authority 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 Authority also receives from the Commissioner of Police notification of all incidents involving police where death or serious bodily harm has occurred. The Authority may undertake an investigation of its own motion, where it is satisfied there are reasonable grounds in the public interest, or in any incident involving death or serious bodily harm.

The Authority evolved from the Police Complaints Authority, which was established in 1988. The Independent Police Conduct Authority Act 2007 marked a major shift in the direction of the Authority. This started with a change of name and change in the composition of the Authority from an individual to a board of up to five members, comprising both legal experts and lay people.⁴

Justice Lowell Goddard, a High Court Judge, is chairperson of the Independent Police Conduct Authority and was appointed as the Police Complaints Authority in February 2007.

Summary of activities

Visits

In its role as NPM for police detention, the Authority conducted 20 site visits during 2010/11. The visits were to both urban and rural sites, and to Police Districts where sites had not been previously inspected. Thirty per cent

of the site visits were unannounced. The Authority Chair also conducted supplementary visits to detention facilities in Wellington, Waitemata, and Northland. This approach enabled the Authority to connect with particular Districts and promote greater awareness and understanding of OPCAT at the local level. The Authority will continue to ensure that unannounced and repeat visits form an integral part of the site visit plan for the 2011/12 year.

The target for this reporting period was 30 visits. Fewer sites were visited as a result of a broadened focus for the Authority's OPCAT work and pressure on limited resources. During the year, the Authority's OPCAT team undertook a significant amount of research, evaluation and engagement with outside groups in addition to the schedule of visits. The Authority believes it can enhance its overall effectiveness and strategic impact by combining site visits with preventive and educative projects.

In light of the Authority's new strategic focus, the target for the 2011/12 reporting year will be a minimum of 15 site visits. Should there be sufficient resources and capacity to undertake further site visits over and above this target, the Authority will make every effort do so. It is committed to the principle outlined in Article 1 of the OPCAT, which has as its primary objective "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."

Engagement

New Zealand Police

The Authority continued to engage with the New Zealand Police at the district and national levels. This includes responding to specific enquiries about inspections and thematic custody issues; dialogue with dedicated liaison officers as part of the Authority's Joint Thematic Review on Children and Young Persons in Police Custody (discussed below); and engagement at the national level with the New Zealand Police OPCAT portfolio holder.

4 Statement of Intent 2009–2012.

The Authority has advanced a proposal to ensure a multidisciplinary approach to engagement by establishing a joint OPCAT panel. It is envisaged this panel will comprise senior and experienced members of staff from a range of disciplines within the New Zealand Police. This development has been agreed to by the OPCAT portfolio holder and consultations are ongoing with respect to the membership of the panel.

The Authority has initiated constructive dialogue with senior staff from Police National Headquarters regarding a suitable system for referring information on 'near misses' (that is, attempted suicide or self harm) in police custody. The ability to track and evaluate emerging issues or trends and respond appropriately is an important part of preventive monitoring. The Authority will continue to work on this project moving forward. It has also sought information from Police on the national rollout of an electronic custody module ('ECM'), a digital platform to allow Police staff to record and retrieve information relating to a detainee during his or her period of time in custody. The Authority is also considering a range of other developments in Police practices, policies and procedures, including new custodial management policies; new means of restraint; and matters relating to pre-trial detention issues.

The Authority's performance under its OPCAT mandate has had a measurable impact on police custodial policies and procedures. This has been achieved through both the engagement with Police National Headquarters and through individual investigations.

While the Authority's OPCAT and investigations roles are largely independent of each other, the Authority's OPCAT work strengthens its human rights focus when conducting independent investigations and can lead to positive impacts on detention conditions and treatment. On Friday 1 July 2011, for example, the Authority released its report into the death of Francisco Javier de Larratea Soler in Whakatane Police cells from the effects of taking methadone, alcohol, and an anti-insomnia drug. Mr de Larratea Soler was a 43-year old Spanish national who had

been taken into custody on the morning of his death for detoxification, after he was found lying on the footpath in a confused and intoxicated state.

The Authority found, among other things, that police did not comply with their own policies when assessing the risks to his health and wellbeing while in custody and the risk evaluation process itself was also flawed and inadequate. Police did not comply with their own policies in relation to mandatory checks, and did not enter his cell during the seven and a half hours he was in custody. At a supervisory and management level, police failed to allocate resources so as to provide fulltime oversight of the watch-house and cells at the Whakatane Police Station.

The Authority made three recommendations in respect of policy and training for the care of persons in Police custody. Police responded publicly on the same day with a media statement including the following comments:

... a new chapter of the Policing manual will be published. This material is focused on ensuring that the authorised custodial processes allow Police staff to identify and act on identified risks in the management of persons in their care. The chapter sets out the policy re checking a prisoner based on risk and implements the IPCA recommendation in this area as well as providing clear guidance for dealing with intoxicated or drug affected people.

Training and the widening focus on custodial management rather than custodial suicide management have also been identified as an area where Police can look to better manage the risks presented by those who have taken drugs or alcohol and come into Police custody.

... Bay of Plenty Police processes have been reviewed and strengthened following this incident. A number of changes have been made to custodial management systems and processes in the Bay of Plenty Police District, and specifically Whakatane Police Station, since Mr Soler's death.

Additional training has been provided to all staff, not just those usually working in the watch house area, about the management of intoxicated people in Police custody. There have also been structural changes to the working environment in the watch house area at Whakatane Police Station, which has led to improvement in relation to the management of prisoners.

The Authority regards this case as a useful example of its ability to influence police policies, practices, and procedures as part of its dual role as an NPM and as an independent oversight body.

NPMs

The Authority remains committed to focused and meaningful engagement with other NPMs in New Zealand and has continued to work closely with the Human Rights Commission during the year. The Authority took part in a three-day joint site visit with the Office of the Children's Commissioner to a Youth Justice residence in March 2011. The visit was a valuable learning opportunity and allowed staff to share methodologies and perspectives. The Authority also contributed to the draft report produced by the Office of the Children's Commissioner on the visit. Where resources and capacity permits, the collaboration between NPMs will continue. This will add significant value and depth to OPCAT work in New Zealand.

Research

Joint Thematic Review

Following the Authority's announcement of the Joint Thematic Review on Children and Young Persons in Police Custody (JTR) with the Office of the Children's Commissioner and the Human Rights Commission in December 2010, the Authority has made progress on this project. It identified the need for a liaison officer from New Zealand Police for the duration of the review, and has since engaged with a dedicated senior officer and other subject matter experts. This positive experience serves to reinforce the constructive relationship that has been

fostered through the OPCAT mandate and highlights the opportunities that exist for future preventive research and evaluation projects.

The Authority called for submissions from members of the public, the Police and Child Youth and Family. It will incorporate these where appropriate into the first draft of the JTR.

The Authority has also established an independent advisory group, comprising academics, practitioners, members of the judiciary, and advocates. It is envisaged this group will be a valuable addition to the JTR and will ensure a range of views are heard as the Authority considers appropriate findings and recommendations. The Office of the Children's Commissioner and the Authority will conduct a joint site visit as part of the review.

In May 2011, the Authority hosted an inter-agency workshop for the JTR. Members from the Authority, the Royal New Zealand Police College, Police National Headquarters, and the Office of the Children's Commissioner took part. The purpose of the half-day workshop was to gain a greater understanding of the training delivered to police staff in relation to children and young persons, both generally and in the context of holding them in custody.

Initially, it was anticipated that core research tasks would be complete by the end of the 2010-2011 reporting year. In light of the breadth and depth of the Authority's OPCAT commitments for this period, and given the interest in this JTR from stakeholders and police, further work will be conducted to ensure the review is robust and the report is comprehensive.

Deaths in Custody

In light of the need to employ a range of methods to ensure effective prevention under OPCAT,⁵ the Authority has also conducted a review of the issues arising in cases involving death in or following police custody. The issues that have been considered in this review have previously been identified by the Authority as relevant thematic issues

5 UN Subcommittee on Prevention of Torture, UN Doc CAT/OP/12/6, 30 December 2010.

under the OPCAT mandate: the use of restraint; suicides; alcohol or other drug-related deaths; mental health and health-related deaths. The review focuses on recurring issues in cases that have been referred to the Authority between 2000 and 2009. The paper is intended to provide evidence-based recommendations for the improvement of the police custodial processes and facilities. Along with the JTR, this project is strategically important for the Authority and will lay the groundwork for future OPCAT reviews and reports.

Communications

Promoting awareness of OPCAT, as provided for in the Optional Protocol, is an important part of the Authority's work. The Authority's website has a dedicated OPCAT section with information aimed at both Police and the public.⁶ In the 2010/2011 reporting year, the Authority continued to raise awareness about OPCAT in New Zealand:

- **August 2010** – OPCAT factsheets were produced for display in Police custody suites, offering guidance on the standards expected in detention facilities, and information about the Authority's role.
- **October 2010** – An inaugural Civil Society Forum was held in Dunedin, where NGOs and other agencies (such as District Health Board mental health units) with a working knowledge of Police detention issues were invited to discuss best practice in this field.
- **April 2011** – Submissions were invited on the JTR by the Authority, the Office of the Children's Commissioner, and the Human Rights Commission, on issues relating to the Police detention of young people (under 17 years).

The Authority will continue to actively raise awareness of OPCAT through its website and will respond to opportunities to promote greater understanding of detention issues through engagement with Police, stakeholder agencies, and the public in the upcoming reporting year.

International

The Authority has significantly enhanced its international engagement efforts this year.

The Authority Chair was elected to the United Nations Subcommittee on Prevention of Torture (SPT) for a two year term on 28 October 2010 at the United Nations Office in Geneva. The Chair took her oath at the thirteenth session of the SPT in Geneva in February 2011. The SPT holds three sessions in Geneva each year, in February, June, and November. The Chair, along with eight other members of the SPT, carried out an in-country mission to the Ukraine between 16 and 25 May 2011.

SPT members are also expected to contribute where possible to the work of relevant partners in the field of torture prevention, through participation in forums, conferences and workshops conducted by NGOs, academic institutions, and regional bodies. The Chair has taken part in engagement and capacity building initiatives in Albania, as well as in the Asia Pacific region.

The work of the Chair as a member of the SPT is independent of the Authority's OPCAT mandate and the position is held by the Chair as an independent expert. While the two roles are functionally and operationally independent, they are nevertheless of direct relevance to each other and complementary to the Authority's police oversight function. The above information is included to highlight the importance of international experience and exposure to methodology, systems and scholarship in other jurisdictions.

As a NPM, the Authority's engagement with international partner agencies has a significant impact on the quality of its preventive initiatives and human rights promotion strategies. OPCAT requires a multi-faceted prevention strategy.⁷

Visits to places of detention should be a central part of any preventive system. However, visits themselves are not enough to prevent torture and other ill-treatment.

⁶ <http://www.ipca.govt.nz/Site/publications/Conditions-of-detention-in-Police-custody/Default.aspx>.

⁷ Association for the Prevention of Torture, OPCAT Implementation Manual 2010 (Rev ed, Imprimerie Courand et associés, Geneva, October 2010), p 20.

As recognised in Article 2 of the UNCAT, the prevention of torture and other ill-treatment requires a range of legislative, administrative, judicial and other measures.

Key engagement initiatives the Authority has undertaken in the 2010/2011 reporting year include:

Monash University Conference

In November 2010, the Authority participated, alongside the Human Rights Commission and the Office of the Children's Commissioner, in an international conference: Accountability and Oversight in Human Rights Practices in Closed Environments, hosted by the School of Law at Monash University in Melbourne. The conference is part of a research project Human Rights in Closed Environments and is a collaborative initiative led by Monash University, the Australian Research Council and six partner organisations. The conference allowed the Authority to engage with practitioners and academics, explain the New Zealand statutory framework and model, and respond to issues or questions on detention monitoring.

Geneva and the United Kingdom

In February 2011, a member of the Authority's OPCAT team undertook consultations with stakeholders in Geneva. Engagement with the APT staff, including the APT Secretary General, OPCAT Coordinator, Asia Pacific Programme Officer, and Detention Monitoring Advisors, was very positive. The meetings principally focused on enhanced collaboration, particularly in relation to the Authority's developmental and preventive work, as well as future OPCAT initiatives at the regional and international levels. Meetings were also held with human rights experts and United Nations staff. The Authority's representative was able to join the APT at an event with members of the SPT and the SPT OPCAT Contact Group. The Contact Group includes: Amnesty International; the Association for the Prevention of Torture; the International Federation of Action by Christians for the Abolition of Torture; the Human Rights Implementation Centre of the University of Bristol; International Disability Alliance; the Mental Disability Advocacy Centre; the World Organisation Against

Torture; Penal Reform International; the Rehabilitation and Research Centre for Torture Victims; and, the World Network of Users and Survivors of Psychiatry. The Authority was able to engage with some of these organisations and discuss both the New Zealand model and wider detention issues.

Following the week-long series of consultations, the Authority was invited to contribute to the APT's forthcoming manual *Monitoring Police Stations and Other Places of Detention under the Authority of Law Enforcement Agencies*. While a range of international materials exists on human rights in detention generally, police detention as a unique environment within the detention framework requires further specialist attention. Identifying the issues arising in this context and laying out methodologies for preventive monitoring will be a significant development in this field. The Authority will continue to engage with the APT as appropriate until the finalisation and dissemination of this manual.

In June and July 2011, a member of the Authority's OPCAT team undertook a one month engagement series in Geneva and the United Kingdom. In Geneva, the Authority engaged with senior staff from both the International Committee of the Red Cross and the APT, as well as other senior officials and human rights experts. As a follow up to the February meetings, the Authority had the opportunity to present to APT staff on New Zealand's framework and the work of the Authority as an NPM. This presentation was very well-received and led to constructive discussion on a range of topics. The Authority's commitment to preventive research was noted, as was the commitment of all NPMs in New Zealand to work collaboratively on visits and other projects. In the United Kingdom, the Authority met with a number of agencies, including:

- the Independent Police Complaints Commission
- Her Majesty's Inspectorate of Prisons⁸
- Her Majesty's Inspectorate of Constabularies
- the Office of the Children's Commissioner

⁸ Her Majesty's Inspectorate of Prisons is the coordinating NPM for the United Kingdom.

- Independent Custody Visiting Association
- Metropolitan Police – Director of Nursing, Forensic Medical Services
- Police Ombudsman for Northern Ireland
- Northern Ireland Human Rights Commission
- Northern Ireland Policing Board.

The liaison with these agencies has furthered the Authority's understanding of and its ability to enhance its role as both a police oversight body and a NPM under its OPCAT mandate. It has provided the Authority with an opportunity to harness methodology and best practice from agencies operating in different jurisdictions, and to foster relationships with a view to ensuring the ongoing sharing of knowledge.

A particular highlight was the opportunity to accompany the inspection team from Her Majesty's Inspectorate of Prisons (HMIP) and Her Majesty's Inspectorate of Constabularies (HMIC). HMIP and HMIC are designated NPMs under the OPCAT framework in the UK and the agencies undertook unannounced visits to three police stations in the Metropolitan Police area. In addition, the Authority's OPCAT team member accompanied inspection staff from the Northern Ireland Policing Board during a custodial visit to a high security detention centre in Belfast.

The value of this overseas experience will in turn be shared with other agencies, including the New Zealand Police, the Human Rights Commission, the Office of the Children's Commissioner, the Office of the Judge Advocate General, and the Office of the Ombudsmen, who have expressed a desire to discuss the UK experience and operating practices, particularly around the detention and treatment of children and young persons and those suffering from mental illness.

Going forward

In 2009/2010, the Authority undertook significant change to improve its operational and development capabilities. In 2010/2011, the Authority added to this development by enhancing its international engagement. Looking ahead to the 2011/2012 reporting year and beyond, the Authority will take stock of its international engagement and implement further best practice methods to ensure both the effectiveness and longevity of OPCAT detention monitoring in New Zealand.

Ombudsmen

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

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

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

Context

Under the Crimes of Torture Act (COTA), the Ombudsmen are the designated NPM with responsibility for monitoring and making recommendations to improve the conditions and treatment of detainees in:

- prisons (19)
- health and disability places of detention (75)
- child care and protection residences (4)
- youth justice residences (5)
- immigration detention facilities (1).

The Ombudsmen's designation in respect of child care and protection and youth justice residences is jointly shared with the Children's Commissioner.

The Ombudsmen are assisted in carrying out these functions under COTA by two inspectors. In 2010/11 the Ombudsmen committed to carrying out 11 announced and five unannounced visits to places of detention.¹⁰ A total of 23 visits were carried out, up from 17 the year before with twelve of these visits unannounced. Visits included:

Places of detention	Announced visits	Unannounced visits
Prisons	3	9
Health and disability places of detention	5	3
Elderly care facilities	1	-
Child care and protection units	1	-
Youth justice residences	1	-
Total	11	12

The Ombudsmen produced 20 inspection reports, twice as many as the year before, and made 103 recommendations. The Ombudsmen reported back to all places of detention within three months of conducting a visit, exceeding the target of doing so in 95 per cent of all cases. Seventy-six per cent of the recommendations were wholly or partially accepted. This can be broken down as follows:

Recommendations	Accepted	Not accepted
Prisons	54	22
Health and disability places of detention	24	3

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); prisoner transport (2007); and the Criminal Justice Sector (2007).

¹⁰ While the office had anticipated carrying out up to 50 visits, it was unsuccessful in obtaining funding for a third inspector.

Generally speaking, the rejected recommendations did not raise any significant or systemic issues; and in every case, the agency concerned provided adequate reasons for the decision not to accept the recommendation(s). However, the Inspectors will continue to monitor the situation in case further issues or problems arise in the future.

This brings the total number of scoping visits conducted to date to 100 and the total number of focused visits to 49.

Issues arising

Prisons

Smoking ban

In the 2009/10 report, the Ombudsmen noted concern that the Department of Corrections' (Corrections) decision to continue to allow staff to smoke whilst banning prisoners from doing so would impact adversely on prisoners' unlock hours. In 2010/11 it was learned that staff and prison visitors will not be permitted to smoke inside the secure perimeter of the prison or bring cigarettes or other tobacco-related items inside the wire. Staff will be able to smoke in clearly designated areas outside the secure perimeter of the prison, but only during authorised breaks. This would appear to address concerns about the possibility of reduced unlock hours. However, the Inspectors will continue to monitor the situation during the coming year.

Double cells

In our 2009/10 report, the Ombudsmen reported having no immediate concerns regarding the proposed double-bunking of prisoners. In 2010/11, follow-up visits were conducted to see how double-bunking was working in practice. Some concerns were identified around inadequate privacy screens surrounding some of the toilet facilities in cells. However, Inspectors were pleased to note Corrections has initiated a significant programme of improvement to bring shared cells up to a new minimum standard across all prison sites.

At risk regimes

Concerns were also identified with the management of prisoners with mental health issues in at risk units. The

Inspectors spoke with a number of prisoners who had been detained in at risk units for several months, often in strip conditions, and with limited opportunities to interact with others. Prisoners in at risk units may be locked down for as many as 22 hours a day. This is because the units are focused on custody rather than treatment. In comparison, the same prisoner while in hospital care is usually unlocked for most of the day and has the opportunity to interact with others. This is because the hospital's management of the prisoner is treatment-focused, with custodial considerations being secondary. At risk regimes will be a primary focus for the Inspectors during 2011/12.

Cell temperatures

The expansion of the 8am to 5pm regime across the prison estate has exacerbated the issue of high temperatures in some cells. During the summer months cell temperatures have been recorded as high as 29 degrees (with cell doors open). While Corrections has a suitable policy to address the issue in the form of providing small electric fans, the policy is not always complied with at some sites. Corrections has undertaken to ensure that all sites comply with the policy.

Food services

Another issue raised in the course of the year was the quality of the food provided to prisoners, and particularly the standard of the sandwiches provided to prisoners as lunch. While there were assurances that the quality would improve, significant improvement has yet to be seen. The Ombudsmen will continue to monitor food services in the coming year.

Questionnaires

The Ombudsmen have been trialling a short questionnaire for prisoners to get a better idea of their experiences of prison life. The confidential questionnaire is distributed and collected by the Inspectors and to date the response rate has been very good. The questionnaire will continue to be used during 2011/12.

Health and disability places of detention

Hybrid orders

In the 2008/09 and 2009/10 reports the Ombudsmen identified significant information breakdown problems around the administration of the Criminal Procedure (Mentally Impaired Persons) Act 2003 and the affect these problems were having on offenders sentenced under what are known as hybrid orders. The Ombudsmen asked the Ministry of Justice to investigate where the information breakdown was occurring and how it could be rectified. The Ministry has now advised that, subsequent to its discussions with Courts, Corrections and Health, a process has been developed to ensure that information about offenders subject to hybrid orders is captured electronically.

Intellectual Disability (Compulsory Care and Rehabilitation) Act

At one particular mental health site the Inspectors were introduced to a client whose primary diagnosis was one of an intellectual disability, but who was being detained under the Mental Health (Compulsory Assessment and Treatment) Act 1992 (MH(CAT) Act). It soon became apparent while speaking with managers and staff on the unit that the client should have been under the care of a specialist service for people with an intellectual disability.

Unfortunately, this client (along with other similar clients in the region), was unable to be provided with inpatient treatment under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003, because that legislation only applies to persons who have an intellectual disability and who are charged with, or convicted of, an offence. Because there are no inpatient beds in this particular region for the management of acutely disturbed, intellectually or developmentally disabled people, they are inappropriately admitted to the mental health unit.

Although managers and clinicians have raised their concerns, it would appear that the unit is being used as a default service for people with a primary intellectual

disability diagnosis, and/or people who are exhibiting challenging behaviour and who are unable to be managed by Disability Support Services. This suggests that persons with an intellectual disability, who have not committed a crime and who do not meet the threshold for detention under the MH(CAT) Act, are not adequately covered by existing legislation and facilities. This concern has been raised with the Ministries of Justice and Health, and the situation will be monitored in 2011/12.

Definitive list of sites

There has been some difficulty initially establishing a definitive list of mental health sites that potentially came under the Ombudsmen's jurisdiction. Each District Health Board has been contacted and has supplied the Ombudsmen with a list of their mental health units. Scoping visits to each of the identified sites will be completed by the end of 2011/12.

Going forward

In 2011/12, the Inspectors are committed to carrying out 22 visits to places of detention, at least 11 of which will be unannounced. Some unannounced visits may occur outside normal business hours. District Health Boards and the Department of Corrections have been advised of this to ensure that the inspectors are not prevented from gaining access to any of the sites. The Ombudsmen are confident that by the end of 2012 all places of detention under their remit will have been visited

Inspector of Service Penal Establishments

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

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

Context

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

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

set aside any building or part of a building as a service prison or a detention quarter; or

declare any place or ship, or part of any place or ship, to be a service prison or detention quarter.

Approach

The ISPE has no staff, but has the capacity to second, if required, to assist meeting OPCAT objectives to ensure all members of the Armed Forces deprived of their liberty are treated with humanity and respect and not subjected to torture or to cruel, inhuman or degrading treatment or punishment.

ISPE continues to arrive unannounced at the reception office of SCE and after presenting credentials meets with the Chief Warden before reviewing the documentation, inspecting the facilities and interviewing each detainee

individually and in private. Feedback is provided routinely at the conclusion of the inspection to the Commandant of SCE and to the Chief Warden. Any significant concern identified, is reported directly to the Chief of Defence Force.

Summary of activities

While up to eight inspections are authorised, one inspection of SCE was completed in 2010/11. The cells at HMNZS PHILOMEL in the Devonport Naval Base were also inspected in the reporting period.

Issues

ISPE continues to receive cooperation at all levels in the NZDF. The Armed Forces comply with its obligations to OPCAT. The ISPE is satisfied with the treatment and conditions of detention and with the measures in place to protect against torture and ill treatment in the future.

SCE is a fairly modern but small detention facility that can cater for up to 8 detainees at any one time. It has a professional staff of Non-commissioned Officer wardens drawn from all three armed services. They are supported by a senior officer from Headquarters 3 Land Force Group, who holds a dual appointment including the position of Commandant SCE in his or her job description. The ISPE's inspections were kept to a minimum this year as it had to contend with the aftermath of the earthquakes in Canterbury for most of the reporting. (Minor damage was experienced at SCE but quickly repaired.)

While detention as a punishment is vital to the maintenance of good order and military discipline, it is a punishment for serious offending sparingly assigned by Disciplinary Officers exercising their responsibilities at Summary Proceedings Hearings. In the reporting period, 50 personnel in the NZDF were committed to SCE. The average length of sentence was 18.8 days detention.

An active restructure of the NZDF is under way. As part of this process it is highly likely that SCE will move from Burham Military Camp to the central North Island where it is more readily available to the vast majority of the Service clientele. (Linton Military Camp or RNZAF Base Ohakea appear to be the most likely hosts.) There is no funding available in the foreseeable future for the capital works for this project, so SCE is likely to remain where it is for some years yet.

With the exception of the cell block in HMNZS PHILOMEL, the standard of detention accommodation available in the camps and bases, though spartan, is suitable for the purpose to which it is put; maintaining good order and military discipline by detaining members of the armed forces for short periods (usually less than 48 hours). The cells in PHILOMEL are universally recognised as substandard and are earmarked for replacement, but it is unlikely, given current fiscal restraint, this will occur any time soon.

If SCE remains resourced and managed at current levels the ISPE is confident that SCE is unlikely to generate OPCAT issues regardless of its location.

Going forward

It is intended to complete up to eight OPCAT inspections of SCE in the 2011/12 year.

Further visits to camp and base holding cells will also be arranged to ensure the facilities meet minimum requirements and the management of detainees is robust enough to ensure that OPCAT objectives continue to be met by the New Zealand armed forces.

Summary of issues

Material conditions

Decent living conditions while in detention are a fundamental human right and are therefore a central focus of OPCAT activities. These are essential for the preservation of human dignity in places of detention – as required by international human rights standards – as well as for detainees' physical and mental health. Both international and domestic minimum standards require adequate space, heating, natural and artificial light, fresh air and ventilation, sanitary facilities, and proper standards of maintenance and cleanliness. Other basic minimum entitlements include adequate outdoor exercise, access to a lawyer and reasonable contact with family and others (e.g. official agencies).

The standard of detention facilities in New Zealand varies greatly. Despite ongoing efforts to upgrade and develop facilities, OPCAT visits continue to encounter examples where significant improvements are required, or where material conditions are inadequate. NPMs continue to raise these issues with the institutions and agencies concerned, and make recommendations where improvements are required.

The importance of regular visits must be emphasised here, as it is through first hand examination of the standard of facilities NPMs are able to identify issues and advise agencies of situations falling short of human rights minimum standards.

Mental Health

Given the prevalence of mental health issues amongst people in detention, the care and treatment available to people with mental illness is an area of particular concern to the OPCAT organisations.

People in detention are entitled to the same standard of health care as that available to others in the community. However, they often come from vulnerable sectors of society, with high and complex health needs, and a much higher prevalence of serious mental illnesses and substance misuse problems than the general population.

In light of these high needs, there is a particular need to ensure the availability and accessibility of appropriate facilities and services. Overall, there is a need to ensure people are placed in an environment that is able to offer the level of therapeutic care and treatment they require.

Resources

All NPMs are committed to implementing OPCAT pragmatically and effectively, and have continued to work hard to operate efficiently within the limitations of available resources. However, this remains an ongoing challenge.

The OPCAT monitoring system has been implemented thus far with little additional resource. NPMs have undertaken careful prioritisation and planning of monitoring activities, focussing on 'formal' places of detention and adopting a 'risk management' approach where necessary. Collaborative work such as joint visits has helped to augment NPMs' small visiting teams.

Despite these efforts, NPMs remain limited in their ability to carry out monitoring activities with the level of coverage, frequency and depth necessary to fully achieve the objectives of OPCAT and meet international best practice.

The OPCAT organisations will continue to work together to enhance capability and operate strategically to achieve maximum impact within the resources available.

APPENDIX 1: OPCAT background

Introduction to OPCAT

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

OPCAT establishes a dual system of preventive monitoring, undertaken by international and national monitoring bodies. The international body, the UN Subcommittee for the Prevention of Torture, will periodically visit each State Party to inspect places of detention and make recommendations to the State.

At the national level, independent monitoring bodies called National Preventive Mechanisms (NPMs) are empowered under OPCAT to regularly visit places of detention, and make recommendations aimed at strengthening protections, improving treatment and conditions, and preventing torture or ill treatment.

Preventive approach

The Association for Prevention of Torture (APT) highlights the fact that “prevention is based on the premise that the risk of torture and ill-treatment can exist or develop anywhere, including in countries that are considered to be free or almost free from torture at a given time”.²

“Whether or not torture or other cruel, inhuman or degrading treatment or punishment occurs in practice in a given State, there is always a need for States to be vigilant in order to guard against the risk of it occurring and to put in place and maintain effective and comprehensive safeguards to protect persons deprived of their liberty. It is the role of preventive mechanisms to ensure that such safeguards are actually in place and operating effectively and to make recommendations to improve the system of safeguards, both in law and in practice, and thereby the situation of persons deprived of their liberty.”³

Prevention is a fundamental obligation under international law, and a critical element in combating torture and cruel, inhuman or degrading treatment and punishment.⁴ The preventive approach of OPCAT encompasses direct prevention (identifying and mitigating or eliminating risk factors before violations occur); and indirect prevention (the deterrence that can be achieved through regular external scrutiny of what are, by nature, very closed environments).

“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.”⁵

Implementation in New Zealand

New Zealand ratified OPCAT in March 2007, following the enactment of amendments to the Crimes of Torture Act 1989,⁶ to provide for visits by the Subcommittee and the establishment of NPMs.

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

2 APT (March, 2011).

3 Subcommittee on Prevention of Torture, (2010), Third Annual Report of the Subcommittee on Prevention of Torture, CAT/C/44/2.

4 It sits alongside the obligations to criminalise torture, ensure impartial investigation and prosecution, and provide rehabilitation for victims.

5 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.

6 A copy of the relevant part of the Act is attached as Appendix 5.

New Zealand's designated NPMs are:

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

Functions and powers of National Preventive Mechanisms

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

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

NPMs are entitled to access all relevant information on the treatment of detainees and the conditions of detention; to access all places of detention and conduct private interviews with people who are detained or who may have relevant information. The NPMs have the right to choose the places they want to visit and the persons they want to interview (Article 20). NPMs must also be able to have contact with the international Subcommittee and publish annual reports (Article 20, 23).

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

The 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 they have all powers of access required under OPCAT.

Central National Preventive Mechanism

OPCAT envisions a system of regular visits to all places of detention.⁷ The designation of a central mechanism aims to ensure there is coordination and consistency among multiple NPMs so they operate as a cohesive system. Central coordination can also help to ensure any gaps in coverage are identified and that the monitoring system operates effectively across all places of detention.

The functions of the Central National Preventive Mechanism (CNPM) are set out in section 32 of the Crimes of Torture Act, and are to coordinate the activities of the NPMs and maintain effective liaison with the UN Subcommittee on Prevention of Torture. In carrying out these functions, the CNPM is to:

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

Monitoring processes

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

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

- Preparatory work, including information collection and identifying specific objectives, before a visit takes place.

7 OPCAT, Article 1.

- The visit itself, during which the NPM visitors speak with management and staff, inspect the institution's facilities and documentation, and speak with people who are detained.
- Upon completion of the visit, discussions with the relevant staff, summarising the NPM's findings and providing an opportunity for an initial response.
- A report to the relevant authorities of the NPM's findings and recommendations, which forms the basis of ongoing dialogue to address identified issues.

NPMs' assessment of the conditions and treatment of detention facilities takes account of international human rights standards,⁸ and involves looking at:⁹

- **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.

⁸ A list of key human rights instruments is set out in Appendix 2.

⁹ A copy of the monitoring standards framework is attached as Appendix 3.

APPENDIX 2: Human rights standards

The development of the standards for NPM monitoring have been formulated with reference to the international human rights framework.¹⁰ 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 of 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 Institutions¹¹ (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)

¹⁰ The text of the international human rights instruments is accessible online at the website of the Office of the High Commissioner for Human Rights: <http://www2.ohchr.org/english/law/index.htm#instruments>.

¹¹ The Advisory Council of Jurists is a body of eminent jurists that advises the Asia Pacific Forum of National Human Rights Institutions on the interpretation and application of international human rights law.

APPENDIX 3: Monitoring standards framework

Although the detailed standards and measures used by National Preventive Mechanisms are tailored to suit each type of detention facility,¹² 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 ¹³
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 BPP 6</p> <p>CAT 1, 2, 16 SMR 31</p> <p>CRC 37 CCLEO 5</p> <p>CPRD 15</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</p> <p>BPUF 9, 15, 16</p> <p>CCLEO 3</p> <p>Restraint:</p> <p>SMR 33-34</p> <p>RPJDL 64</p>
Segregation / isolation / seclusion	<p>Use of segregation or seclusion is strictly in accordance with legislation</p> <p>Use of conditions amounting to isolation is limited and is accompanied by safeguards, including access to medical examination and monitoring, review and appeal</p> <p>Access to basic necessities, including food, light and exercise should never be denied</p>	<p>BPTP 7</p> <p>GC20 6</p> <p>SMR 32</p>

¹² For example, see the IPCA checklist for inspecting police detention facilities, accessible at <http://www.ipca.govt.nz/Site/publications/Conditions-of-detention-in-Police-custody/Default.aspx>.

¹³ See Appendix 2 for full titles of the international human rights instruments; numbers refer to the relevant article, paragraph or rule.

Issues	Standards	Relevant international references ¹³
Protection Measures		
Information	<p>People in detention are effectively informed of their rights and obligations and about the operation of the place of detention</p> <hr/> <p>Persons under arrest are informed of the reasons for their arrest and any charges, and of their rights</p> <p>Questioning is conducted in accordance with Minimum Interrogation Standards</p>	<p>BPP 13 SMR 35</p> <hr/> <p>BPP 10, 13 MIS</p>
Disciplinary procedures	<p>Disciplinary procedures are set out in clear rules, and these are effectively conveyed to detainees and staff</p> <p>Rules and sanctions are lawful, reasonable, and proportionate, and are fairly and consistently applied</p> <p>The rules of natural justice are applied, including that people in detention have a right to be heard before a competent authority, to prepare a defence and have a right to appeal</p>	<p>BPP 30 SMR 27-32</p>
Complaint and inspection procedures	<p>People in detention have access to effective internal and external complaint mechanisms – they are able to make a complaint if and when they want to, without fear of adverse consequences</p> <p>Complaints are dealt with in a fair, timely and effective manner</p> <p>Inspection mechanisms are able to visit regularly, and people in detention are able to communicate freely and confidentially with inspection bodies</p>	<p>BPP 29 SMR 55</p> <p>BPP 33 SMR 35-36</p>
Categories of people in detention	<p>For their protection, and in recognition of the special needs of different categories of detainees, people in detention are separated according to gender, age, and judicial/legal status:</p> <ul style="list-style-type: none"> Young people are detained separately from adults Accused persons are detained separately from convicted persons Men and women are detained separately <p>Attention is given to the specific needs of particular groups – such as 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	<p>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>	<p>BPP 12 SMR 7 GC20 11</p>

Issues	Standards	Relevant international references ¹³
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>	SMR 9-14 (Accommodation), 26
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 or 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 ¹³
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 well-being, and to assist in their personal development and reintegration into society, people in detention should spend time outside their cells, engaged in purposeful activities – including meaningful, remunerated employment; education; recreational and cultural activities</p> <p>Working conditions and health and safety requirements are observed</p> <p>People in detention are able to exercise their right to freedom of religion and belief, to observe and practice their religion if they choose to, and have access to a representative of their religion</p>	<p>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 ¹³
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 4: Optional Protocol to the Convention against Torture

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

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

Entered into force on 22 June 2006

PREAMBLE

The States Parties to the present Protocol,

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

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

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

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

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

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

Convinced that the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment can be strengthened by non-judicial means of a

preventive nature, based on regular visits to places of detention, Have agreed as follows:

PART I

General principles

Article 1

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

Article 2

1. A Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture (hereinafter referred to as the Subcommittee on Prevention) shall be established and shall carry out the functions laid down in the present Protocol.

2. The Subcommittee on Prevention shall carry out its work within the framework of the Charter of the United Nations and shall be guided by the purposes and principles thereof, as well as the norms of the United Nations concerning the treatment of people deprived of their liberty.

3. Equally, the Subcommittee on Prevention shall be guided by the principles of confidentiality, impartiality, non-selectivity, universality and objectivity.

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

Article 3

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

Article 4

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

necessary, the protection of these persons against torture and other cruel, inhuman or degrading treatment or punishment.

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

PART II

Subcommittee on Prevention

Article 5

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

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

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

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

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

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

Article 6

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

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

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

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

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

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

Article 7

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

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

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

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

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

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

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

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

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

Article 8

If a member of the Subcommittee on Prevention dies or resigns, or for any cause can no longer perform his or her duties, the State Party that nominated the member shall nominate another eligible person possessing the qualifications and meeting the requirements set out in article 5, taking into account the need for a proper balance among the various fields of competence, to serve until the next meeting of the States Parties, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

Article 9

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

Article 10

1. The Subcommittee on Prevention shall elect its officers for a term of two years. They may be re-elected.
2. The Subcommittee on Prevention shall establish its own rules of procedure. These rules shall provide, *inter alia*, that:
 - (a) Half the members plus one shall constitute a quorum;
 - (b) Decisions of the Subcommittee on Prevention shall be made by a majority vote of the members present;
 - (c) The Subcommittee on Prevention shall meet in camera.

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

PART III

Mandate of the Subcommittee on Prevention

Article 11

1. The Subcommittee on Prevention shall:
 - (a) Visit the places referred to in article 4 and make recommendations to States Parties concerning the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;
 - (b) In regard to the national preventive mechanisms:
 - (i) Advise and assist States Parties, when necessary, in their establishment;
 - (ii) Maintain direct, and if necessary confidential, contact with the national preventive mechanisms and offer them training and technical assistance with a view to strengthening their capacities;
 - (iii) Advise and assist them in the evaluation of the needs and the means necessary to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;
 - (iv) Make recommendations and observations to the States Parties with a view to strengthening the capacity and the mandate of the national preventive mechanisms for the prevention of torture and other cruel, inhuman or degrading treatment or punishment;
 - (c) Cooperate, for the prevention of torture in general, with the relevant United Nations organs and mechanisms as well as with the international, regional and national institutions or organizations working towards the strengthening of the protection of all persons against torture and other cruel, inhuman or degrading treatment or punishment.

Article 12

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

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

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

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

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

Article 13

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

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

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

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

Article 14

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

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

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

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

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

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

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

Article 15

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

Article 16

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

2. The Subcommittee on Prevention shall publish its report, together with any comments of the State Party concerned, whenever requested to do so by that State Party. If the State Party makes part of the report public, the Subcommittee on Prevention may publish the report in whole or in part. However, no personal data shall be published without the express consent of the person concerned.

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

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

PART IV

National preventive mechanisms

Article 17

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

Article 18

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

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

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

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

Article 19

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

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

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

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

Article 20

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

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

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

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

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

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

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

Article 21

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

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

Article 22

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

Article 23

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

PART V**Declaration****Article 24**

1. Upon ratification, States Parties may make a declaration postponing the implementation of their obligations under either part III or part IV of the present Protocol.
2. This postponement shall be valid for a maximum of three years. After due representations made by the State Party and after consultation with the Subcommittee on Prevention, the Committee against Torture may extend that period for an additional two years.

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

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

Article 26

1. A Special Fund shall be set up in accordance with the relevant procedures of the General Assembly, to be administered in accordance with the financial regulations and rules of the United Nations, to help finance the implementation of the recommendations made by the Subcommittee on Prevention after a visit to a State Party, as well as education programmes of the national preventive mechanisms.

2. The Special Fund may be financed through voluntary contributions made by Governments, intergovernmental and non-governmental organizations and other private or public entities.

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

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

Article 28

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

Article 29

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

Article 30

No reservations shall be made to the present Protocol.

Article 31

The provisions of the present Protocol shall not affect the obligations of States Parties under any regional convention instituting a system of visits to places of detention. The

Subcommittee on Prevention and the bodies established under such regional conventions are encouraged to consult and cooperate with a view to avoiding duplication and promoting effectively the objectives of the present Protocol.

Article 32

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

Article 33

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

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

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

Article 34

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

Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting at the conference shall be submitted by the Secretary-General of the United Nations to all States Parties for acceptance.

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

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

Article 35

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

Article 36

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

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

Article 37

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

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

APPENDIX 5: Part 2, Crimes of Torture Act 1989

Crimes of Torture Act 1989

PART 2

Prevention of Crimes of Torture

Preliminary provisions

15 Purpose of this Part

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

16 Interpretation

In this Part, unless the context otherwise requires,—

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

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

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

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

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

- (a) an Ombudsman holding office under the Ombudsmen Act 1975:
- (b) the Independent Police Conduct Authority:
- (c) the Children's Commissioner:
- (d) visiting officers appointed in accordance with relevant Defence Force Orders issued pursuant to sections 175 and 206 of the Armed Forces Discipline Act 1971:
- (e) any other person, body or agency that is designated a National Preventive Mechanism

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

Place of detention means any place in New Zealand where persons are or may be deprived of liberty, including, for example, detention or custody in —

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

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

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

Visits by Subcommittee

17 Purpose of sections 18 to 20

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

18 Subcommittee's access to information

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

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

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

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

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

(b) any person in a place of detention.

20 Subcommittee may conduct interviews

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

(a) any person in a place of detention:

(b) any other person who the Subcommittee believes may be able to provide relevant information.

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

(a) criminal liability:

(b) civil liability:

(c) disciplinary process:

(d) change in detention conditions:

(e) other disadvantage or prejudice of any kind.

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

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

(a) offensive, threatening, abusive, or intimidating to any person; or

(b) threatening or disruptive to the security and order of the place of detention.

21 Experts may accompany Subcommittee

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

22 Objection to visit by Subcommittee

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

(a) there is an urgent and compelling reason on 1 of the following grounds:

(i) national defence; or

(ii) public safety; or

(iii) natural disaster; or

(iv) serious disorder in the place of detention; and

(b) that ground temporarily prevents access to the place of detention.

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

23 Appointment of New Zealand officials

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

24 Identification certificates

The Minister may issue a certificate identifying—

(a) any member of the Subcommittee:

(b) any expert accompanying the Subcommittee:

(c) other persons appointed under section 23 to accompany or assist the Subcommittee during visits to places of detention in New Zealand.

25 Ministerial directions

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

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

National Preventive Mechanisms

26 Designation of National Preventive Mechanisms

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

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

(3) A National Preventive Mechanism may be designated—

(a) in respect of such places of detention as may be specified in the notice; and

(b) on any terms and conditions specified in the notice.

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

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

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

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

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

27 Functions of National Preventive Mechanism

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

(a) to examine, at regular intervals and at any other times the National Preventive Mechanism may decide, —

(i) the conditions of detention applying to detainees; and

(ii) the treatment of detainees:

(b) to make any recommendations it considers appropriate to the person in charge of a place of detention —

(i) for improving the conditions of detention applying to detainees:

(ii) for improving the treatment of detainees:

(iii) for preventing torture and other cruel, inhuman or degrading treatment or punishment in places of detention:

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

(i) the House of Representatives, if the National Preventive Mechanism is an Officer of Parliament; or

(ii) the Minister, if the National Preventive Mechanism is not an Officer of Parliament:

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

28 National Preventive Mechanism's access to information

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

(a) the number of detainees in the places of detention for which it is designated:

(b) the treatment of detainees in those places of detention:

(c) the conditions of detention applying to detainees in those places of detention.

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

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

(a) any place of detention for which it is designated, and to every part of that place:

(b) any person in a place of detention for which it is designated.

30 National Preventive Mechanism may conduct interviews

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

(a) any person in a place of detention for which it is designated:

(b) any other person who the National Preventive Mechanism believes may be able to provide relevant information.

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

(a) criminal liability;

(b) civil liability;

(c) disciplinary process;

(d) change in detention conditions;

(e) other disadvantage or prejudice of any kind.

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

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

(a) offensive, threatening, abusive, or intimidating to any person; or

(b) threatening or disruptive to the security and order of the place of detention.

Central National Preventive Mechanism

31 Designation of Central National Preventive Mechanism

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

32 Functions of Central National Preventive Mechanism

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

(a) coordinate the activities of the National Preventive Mechanisms; and

(b) maintain effective liaison with the Subcommittee.

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

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

(b) review the reports prepared by the National Preventive

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

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

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

Miscellaneous provisions

33 Confidentiality of information

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

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

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

(b) giving effect to this Act.

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

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

34 Powers of National Preventive Mechanism

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

35 Protections, privileges, and immunities

Where a National Preventive Mechanism has protections, privileges, and immunities in relation to the exercise of any

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

36 Publication of National Preventive Mechanism report

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

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

- (a) publicly notify where copies of the report may be inspected and purchased; and
- (b) make copies of the report available to the public at the place set out in the public notification, on request, for inspection free of charge and for purchase at a reasonable cost.

37 This Part not limited by other Acts

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

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