

## Written responses to the United Nations Committee against Torture

New Zealand is honoured to have participated in the review by the United Nations Committee against Torture (the Committee) of New Zealand’s progress in upholding our obligations under the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention).

This document provides further information in response to the remaining queries of the Committee.

### Pepper spray in prisons

Pepper spray use on women appears to be proportionate to their representation in the prison population. As of 20 July 2023, women make up 5.6% of the total prison and have a rate of 7% for incidences of pepper spray use.

Regarding the entire reporting period, Appendix One shows the rate of incidence against the genders of male and females as percentage of the total prison population. The table illustrates how – over each year within the reporting period – the rate of incidence compared between men and women does not show a disproportionately high use of pepper spray in women’s prisons.

Furthermore, the Corrections Amendment Regulations 2023 introduced new conditions and restrictions on the use of pepper spray, with one requirement particularly impacting women in prison. This requirement states that Prison Directors must be satisfied that reasonable steps have been taken to consult a registered health professional on whether there are any matters, such as pregnancy, that could place a particular risk of harm from the effects of pepper spray on a prisoner.

Because pepper spray use on women appears to be proportionate to their representation in the prison population, there can be no comment on the drivers of ‘use being higher in women’s prisons than in men’s prisons’ as this is not an accurate statement.

### Data on pepper spray use

	Percentage of the population	Rate of incidence
July 2019 - June 2020		
<b>Men</b>	93.10%	10%
<b>Women</b>	6.90%	8%
July 2020 - June 2021		
<b>Men</b>	93.68%	9%
<b>Women</b>	6.32%	4%
July 2021 - June 2022		

<b>Men</b>	94.29%	11%
<b>Women</b>	5.71%	15%
July 2022 - June 2023		
<b>Men</b>	93.97%	7%
<b>Women</b>	6.02%	7%

N.B., this population percentage is taken from an average population during the entire year's period.

### **Intersex: Guidelines for new-borns**

*Atawhai Taihemahema* - a clinical guideline for new-borns who present with genital variations has been published and is available here: <https://starship.org.nz/guidelines/differences-of-sex-development-atawhai-taihemahema/>.

Health New Zealand *Te Whatu Ora*, with the Māori Health Authority *Te Aka Whai Ora* and the Ministry of Health *Manatū Hauora*, are also currently working on introducing a rights-based approach to children and their family/whanau.

### **New Zealand Defence Force training**

The New Zealand Defence Force is in the process of developing more up-to-date training on the Law of Armed Conflict, including an online component for all members of the Defence Force. This will include components on obligations in respect of persons deprived of their liberty and encompass the obligations under the Convention. This will be implemented through secondary legislation called a Defence Force Order. This will build on and update training currently provided on the Law of Armed Conflict and the obligations under the Convention.

This training includes the fundamental standards for the treatment of detainees and applies all relevant procedures and processes. Much of the training provided by the Defence Force is provided by legal officers (uniformed lawyers).

While this training will not refer specifically to the Convention or the Istanbul Protocol, the requirements of both have been incorporated. It will cover:

- obligations and measures for preventing torture and ill-treatment; as well as
- responsibilities for recording, reporting, and investigating detainee complaints.

#### *Additional training for deployments*

Defence Force training includes training under the Law of Armed Conflict (also known as International Humanitarian Law) which incorporates aspects of the Convention, for example, use of force and detention. All members of the Armed Forces are required to undertake training on the Law of Armed Conflict prior to deployment, which refreshes or builds on Law of Armed Conflict training received during initial training after enlisting. This training is tailored for each deployment. In addition to this training are the following:

- Additional training is provided on the Law of Armed Conflict relevant to a member's rank. For example, the Junior Non-Commissioned Officer Promotion Course, or advanced training at the Command and Staff College for senior officers.
- For each deployment there is tailored training on the Rules of Engagement and the Law of Armed Conflict is provided by the legal staff at HQ Joint Forces New Zealand. For example, use of force and detention in depth.
- Deploying units must be certified before they are approved for deployment and may be accompanied by legal officers to ensure those deployed are kept continually briefed – this is dependent on the complexity and scale of the deployment.
- Military exercises commonly include training on legal obligations under the Law of Armed Conflict and included the participation of non-government organisations and the International Committee of the Red Cross.
- The Defence force has a manual called the Manual of Armed Conflict Law (<https://www.nzdf.mil.nz/assets/Uploads/DocumentLibrary/DM-69-2ed-vol4.pdf>) which outlines all obligations of members of the Armed Forces in respect to the Law of Armed Conflict. This is updated regularly.

## **The Istanbul Convention: Immigration**

### *Refugee and Protection Officers training*

The New Zealand Refugee and Protection Officers' training focuses on refugee status determination. As part of their standard induction, Refugee and Protection Officers are trained in interviewing claimants who have experienced trauma or have other psychological vulnerabilities. Standard induction training refers to the latest versions of relevant guidelines and manuals of any source, including the Istanbul Protocol. Staff also receive regular relevant refresher training. For example, in July 2023 UNHCR Canberra delivered a programme to all Refugee and Protection Officers on psychologically vulnerable claimants, including those who have experienced trauma including torture.

In addition, the staff of the non-government organisation contracted by the New Zealand Government to provide psychological support to refugees, Refugees as Survivors New Zealand, are highly trained in trauma-informed care. Its training also incorporates information from the current version of the Istanbul Protocol.

### *Recognition and support for victims of torture*

New Zealand does not specifically identify victims of torture in the asylum context, as the focus is determining an international protection need. However, people may be identified or self-identify as victims of torture during their determination process or at any other point while they are in New Zealand.

The Refugee and Protection Officer may make findings of fact and law in their decision which may include whether the person is a victim, or at risk, of torture as per the definition under the Convention Against Torture (the Convention). Refugee and Protection Officers will consider all information provided by the claimant and they may also seek, and consider, information from any source but it is open on them to rely solely on the claimant's personal evidence. Psychological and medical reports may be requested by the claimants or their legal representatives.

The person may be recognised as a protected person under the Convention if there are substantial grounds for believing that they would be subjected to torture if deported from New Zealand. This is a complementary protection regime and refugee status is assessed first, and when relevant will include an equivalent assessment. Protection under the Convention may be applied in cases where the person is at risk but does not meet the definition in the Refugee Convention. All decisions are subject to a 'second person check' by a senior officer before finalisation. Declined claimants may appeal to the independent Immigration and Protection Tribunal which will hear the appeal on a de novo basis.

Claimants are entitled to legal representation and may be eligible to legal aid funding. They are provided with information regarding the services they may access at lodgement. This information is also publicly available. Claimants, and people found to meet the threshold for recognition as a refugee or protected person (under the Convention or the International Covenant on Civil and Political Rights) can access the New Zealand health system on the same basis as

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New Zealand residents and can receive psychological services and treatment from Refugees as Survivors New Zealand or other health care providers.

**Data on spitting hoods and pepper spray 480 (OC) use**

The following data is on the use of OC spray and application of spitting hoods in New Zealand since 2018.

**Table 1.** Number of People (under 18 years) who had a Spitting Hood Applied by Year, Subject Age and Ethnicity

<i>Year</i>	<i>Age</i>	<i>Asian</i>	<i>European</i>	<i>Māori</i>	<i>MELAA</i>	<i>Pacific peoples</i>	<i>Other/ Unknown</i>	<i>Total</i>
2018	9			1				1
2018	14			2				2
2018	15		2	3		2		7
2018	16		4	5				9
2018	17		2	1				3
2019	10			1				1
2019	13		1					1
2019	14					1		1
2019	15			1				1
2019	16			1		1		2
2019	17	1		6				7
2020	13			2				2
2020	14		1	4				5
2020	15		2	2		1		5
2020	16		3	3				6
2020	17		3	1		1		5
2021	12		1					1
2021	13		1	3				4

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2021	14			6				6
2021	15		1	3				4
2021	16		1	3		1		5
2021	17		2	6				8
2022	12		1					1
2022	14		1	2				3
2022	15		3					3
2022	16		2	4		1	1	8
2022	17	1	2	1			2	6
<b>Total</b>		<b>2</b>	<b>32</b>	<b>60</b>		<b>8</b>	<b>3</b>	<b>105</b>

**Table 2.** Number of People (over 18 years) who had a Spitting Hood Applied, by Year and Ethnicity

<i>Year</i>	<i>Asian</i>	<i>European</i>	<i>Māori</i>	<i>MELAA</i>	<i>Pacific peoples</i>	<i>Other/ Unknown</i>	<i>Total</i>
2018	2	60	78	3	17	-	160
2019	7	80	119	2	20	1	229
2020	6	107	148	9	28	2	300
2021	7	79	113	3	21	3	226
2022	6	84	95	5	16	3	209
<b>Total</b>	<b>25</b>	<b>387</b>	<b>522</b>	<b>22</b>	<b>96</b>	<b>9</b>	<b>1061</b>

**Table 3.** People (under 18 years) who were exposed to OC Spray, by Year, Subject Age and Ethnicity

<i>Year</i>	<i>Age</i>	<i>Asian</i>	<i>European</i>	<i>Māori</i>	<i>MELAA</i>	<i>Pacific peoples</i>	<i>Other/Unknown</i>	<i>Total</i>
2018	13		1	3				4
2018	14			9		1		10
2018	15		4	11		1		16
2018	16		5	15		5	1	26
2018	17		7	26		1		34
2019	13			5		1		6
2019	14		2	8				10
2019	15		2	14		3		19
2019	16		3	15		3	1	22
2019	17		5	26		6	1	38
2020	10			1				1
2020	12		1	1				2
2020	13		1	4				5
2020	14		1	5				6
2020	15		3	10		1		14
2020	16		5	14		1		20
2020	17	1	5	21	1	5		33
2021	12			3				3
2021	13			5		1	1	7
2021	14		1	10			1	12



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2021	15			10		1	1	12
2021	16		4	20			1	25
2021	17		9	11	1		2	23
2022	10			1				1
2022	11			1				1
2022	12			2				2
2022	13			2			3	5
2022	14		2	9				11
2022	15		2	8		2	5	17
2022	16		5	18		1	5	29
2022	17		1	27		2	12	42
<b>Total</b>		<b>1</b>	<b>69</b>	<b>314</b>	<b>2</b>	<b>35</b>	<b>33</b>	<b>454</b>

**Table 4.** People (over 18 years) who were exposed to OC Spray, by Year and Ethnicity

<i>Year</i>	<i>Asian</i>	<i>European</i>	<i>Māori</i>	<i>MELAA</i>	<i>Pacific peoples</i>	<i>Other/ Unknown</i>	<i>Total</i>
2018	5	264	641	8	127	2	1044
2019	5	281	645	8	122	1	1060
2020	10	365	717	10	134	4	1239
2021	10	315	686	10	129	18	1168
2022	11	357	901	14	163	98	1544
<b>Total</b>	<b>40</b>	<b>1523</b>	<b>3404</b>	<b>49</b>	<b>652</b>	<b>123</b>	<b>5781</b>

*Data tables explanations*

**Table 1** displays the number of people under 18 years old who had a spitting hood applied during the past five calendar years (2018 – 2022), separated by their ethnicity and age. The column values do not sum to the column totals due to some subjects appearing in multiple years. Over this period, the highest number of separate incidents in which the same person (under 18 years old) had a spitting hood applied was two, and this occurred for six people.

**Table 2** displays the number of people aged 18 years and above who had a spitting hood applied during the past five calendar years (2018 – 2022), separated by their ethnicity. The column values do not sum to the column totals due to some subjects appearing in multiple years. Over this period, the highest number of separate incidents in which the same person (over 18 years old) had a spitting hood applied was six, and this occurred for one person.

**Table 3** displays OC spray usage on people aged under 18 years for the past five years (2018 – 2022), separated by their ethnicity and age. The column values do not sum to the column totals due to some subjects appearing in multiple years. Over this period, the highest number of separate incidents in which the same person (under 18 years old) was exposed to OC spray was three, and this occurred for one 16-year-old.

**Table 4** displays OC spray usage on people aged 18 years or older for the past five years (2018 – 2022) separated by their ethnicity and year. The column values do not sum to the column totals due to some subjects appearing in multiple years. Over this period, the highest number of separate incidents in which the same person (over 18 years old) was exposed to OC spray was six, and this occurred for one person.

### Data on complaints against Police

Since 2019, there have been a total of 41 complaints of excessive force or ill-treatment in Police custody. 15 of these complaints were about cruel, inhumane or degrading treatment by Police.

The number of complaints per year since 2019 has stayed consistent between 8 to 12 complaints per year, with 0 complaints in 2019/2020.

### Complaints of excessive force or ill-treatment in custody

	Excess use of Force	Excess use of Mechanical Restraint	Cruel, Inhumane or degrading treatment	Total
<b>2018/2019</b>	3	2	4	9
<b>2019/2020</b>	0	0	0	0
<b>2020/2021</b>	5	1	6	12
<b>2021/2022</b>	5	0	3	8
<b>2022/2023</b>	9	1	2	12
<b>Total</b>	22	4	15	41

**Complaints outcomes**

**2018 – 2019**

		<b>Finding</b>	<b>Action Taken</b>	<b>Outcome</b>
<b>2018 – 2019</b>	Excess Use of Force	Misconduct	Criminal Charge - Dismissed s147 CPA	Resigned during process
		Serious Misconduct	Criminal Charge - Discharged s106 SA	Final Warning
		Undesirable Conduct	Criminal Charge - Convicted and Sentenced	Resigned during process
	Excess use of Mechanical Restraint	Policy / Procedure failure	Debrief / Lessons Learnt	N/A*
		Error in Judgement	Debrief / Lessons Learnt	N/A*
	Cruel, Inhumane or degrading treatment	Error in Judgement	Expectation Setting	N/A*
		Misconduct	Criminal Charge - Dismissed s147 CPA	Resigned during process
		Undesirable Conduct	Criminal Charge - Convicted and Sentenced	Resigned during process
		Error in Judgement	Debrief / Lessons Learnt	N/A*

\*N/A is reflected in the action taken.

Colour coding reflects the outcome originating from the same matter.

**2020 – 2021**

		<b>Finding</b>	<b>Action Taken</b>	<b>Outcome</b>
<b>2020 – 2021</b>	Excess Use of Force	Serious Misconduct	Criminal Charge - Convicted and Sentenced	Resigned during process
		Serious Misconduct	Criminal Charge - Discharged s106 SA	Final Warning
		Serious Misconduct	Criminal Charge - Discharged s106 SA	Final Warning
		Serious Misconduct	Criminal Charge - Discharged s106 SA	Resigned during process
		Serious Misconduct	Supported Resolution - TPO	Expectation Setting
	Excess use of Mechanical Restraint	Not Proven	Debrief / Lessons Learnt	N/A*
	Cruel, Inhumane or degrading treatment	Error in Judgement	Expectation Setting	N/A*
		Error in Judgement	Expectation Setting / Training	N/A*
		Policy / Procedure failure	Debrief / Lessons Learnt	N/A*
		For Recording	No Action Possible	N/A*
		For Recording	Revised Policy / Procedure	N/A*
		Error in Judgement	Debrief / Lessons Learnt	N/A*

\*N/A is reflected in the action taken.

**2021 – 2022**

		<b>Finding</b>	<b>Action Taken</b>	<b>Outcome</b>
<b>2021 – 2022</b>	Excess Use of Force	TBA**	Criminal Charge	Ongoing
		Serious Misconduct	Supported Resolution - TPO	Resigned During Process
		TBA**	Criminal Charge	Ongoing
		TBA**	Criminal Charge	Ongoing
		TBA**	Criminal Charge	Ongoing
	Excess use of Mechanical Restraint	Nil	Nil	Nil
	Cruel, Inhumane or degrading treatment	Error in Judgement	Debrief / Lessons Learnt	N/A*
		Serious Misconduct	Dismissal	N/A*
		Duty / Responsibility failure	Debrief / Lessons Learnt	N/A*

\*N/A is reflected in the action taken.

\*\*TBA – Matter is still ongoing