New Zealand's 6th periodic review under the Convention Against Torture

Submission of the OPCAT National Preventive Mechanism

New Zealand ratified OPCAT in 2007 and established a multi-body NPM comprising four independent monitoring bodies each responsible for specific places of detention, and a central coordinating NPM. The NPMs are the Office of the Ombudsman ("Ombudsman"), the Independent Police Conduct Authority ("IPCA"), the Office of the Children's Commissioner ("OCC") and the Inspector of Service Penal Establishments ("ISPE"). The New Zealand Human Rights Commission ("Commission") is the central NPM with responsibilities for coordination, reports, systemic issues and liaison with the United Nations ("UN").

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1 Introduction

1. New Zealand's National Preventive Mechanism ("NPM") as established under the Optional Protocol to the Convention against Torture ("OPCAT") welcomes the opportunity to make a submission to the Committee Against Torture ("Committee") in relation to New Zealand's 6th periodic review.

2. New Zealand ratified OPCAT in 2007 and established a multi-body NPM comprising four independent monitoring bodies each responsible for specific places of detention, and a central coordinating NPM. The NPMs are the Office of the Ombudsman ("Ombudsman"), the Independent Police Conduct Authority ("IPCA"), the Office of the Children's Commissioner ("OCC") and the Inspector of Service Penal Establishments ("ISPE"). The New Zealand Human Rights Commission ("Commission") is the central NPM with responsibilities for coordination, reports, systemic issues and liaison with the United Nations ("UN").

3. The Crimes of Torture Act 1989 ("COTA") is the primary piece of anti-torture legislation in New Zealand. An amendment to the COTA in 2006 added a new Part 2 to the Act, with the stated purpose of meeting New Zealand's obligations under the OPCAT and with provisions which closely reflect the text of OPCAT. The OPCAT itself is attached in full as a schedule to the Act.

Visits by International monitoring bodies

4. The United Nations Subcommittee on Prevention of Torture ("SPT") visited New Zealand for the first time in April 2013. Its report to the New Zealand Government confirmed a number of issues that NPMs had also identified. In summary, the recommendations relate to:

   a) resourcing and effectiveness of the NPM monitoring bodies and the OPCAT system in New Zealand;
   b) alignment of domestic legislation with human rights standards;
   c) a need to review the institutional framework, including regime conditions, access to parole and pre-trial detention;

d) fundamental safeguards, such as access to information and complaint mechanisms;

e) Māori over-representation in the criminal justice system and availability of programmes aimed at reducing Māori recidivism;

f) juvenile justice, including the currently low legal age of criminal responsibility and access to organised activities;

g) health and mental health care in detention, particularly the high rates of often chronic and acute mental disorders within the prison population, and access to timely and adequate health and mental health care services; and

h) conditions of detention, including adequacy of facilities, access to exercise and outdoor activities, nutrition, the right to privacy and the use of segregation and restraint.

5. A copy of the full SPT report and the corresponding government response is attached at **Appendix 1**. The NPMs **recommend that the Committee urge the Government to commit to implementing the SPT recommendations over the next reporting period (subject to one clarification set out below at section 2 of this submission).**

6. In addition the United Nations Working Group on Arbitrary Detention ("UNWGAD") conducted a country visit to New Zealand from 24 March to 7 April 2014. The Working Group acknowledged that, overall, legislation and policy concerning deprivation of liberty in New Zealand is well-developed and generally consistent with international human rights law and standards. However, they drew special attention to the over-representation of Māori in the prison population, the detention of refugees and asylum-seekers, and loopholes in law and practices regarding judicial proceedings involving persons with intellectual disabilities. Attached as **Appendix 2** is a copy of the WGAD's statement released at the end of its visit to New Zealand.

7. This submission is based on the work that has been undertaken by the NPMs in accordance with their mandate and functions. The submission has been presented according to relevant thematic issues. For each thematic area, the NPMs have identified the relevant article(s) of the Convention and recommendations from the SPT and WGAD, as well as providing a brief summary of the key issues. A list of recommended actions is compiled in **Appendix 3** of the submission.

2 Clarification in relation to SPT report

8. In its 2013 visit the SPT inspected the Burnham Military Camp. Overall the SPT was very impressed by the Services Corrective Establishment ("SCE"). However, the SPT was critical of the camp cell facilities they inspected.

9. The SPT's principal concern was the absence of toilet facilities in the cells. As it stands, for a detainee to visit the toilet from a camp or base cell he or she has to call for the assistance of a guard who will provide access to toilet facilities located nearby. This led the SPT to recommend that:[1]

Deficiencies concerning sanitary infrastructures in camp cells be remedied, giving due consideration to international standards.

10. This recommendation fails to recognise that camp or base cell facilities are used by the Armed Forces as a last resort, and when they are, detention for periods over 12 hours is very unusual. Further, Camp and Base Standing Orders direct the closest of supervision for those detained, so a member of the Armed Forces who is detained in a camp or base cell can call for toilet assistance from a guard or escort, who is readily available and close at hand, and the situation is not as problematic for a detainee as suggested by the SPT in their report.[2]

11. The SPT made similar comments in relation to Navy Cells.[3] These comments failed to recognise the specific circumstances of any detention in those cells.

3 Summary of NPM monitoring activities[4]

12. Since 2007 the NPM has provided a system of independent monitoring. Members of the NPM make recommendations to detaining agencies to strengthen protections and improve capability across the sector and also contribute to developing a culture where the rights of all persons deprived of liberty are protected and respected.

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[1] SPT, *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to New Zealand,* at 101.
[2] http://www.hrc.co.nz/2014/12/09/opcat-annual-report-july-1-2013-june-30-2014/
[3] Supra note 1 at 98.
[4] For more information on the NPM's work see its 2013/2014 annual report available here: http://www.hrc.co.nz/2014/12/09/opcat-annual-report-july-1-2013-june-30-2014/

13. The NPM is not aware of any torture occurring in New Zealand in the 2013/2014 period. However, cruel, inhuman or degrading treatment or punishment in detention can and does still occur, whether intentional or not.[5]

IPCA

14. In 2013/2014 the IPCA received 2,193 complaints from members of the public or notification from the police. Of these, 9.5 percent were identified to have OPCAT related issues. From these the IPCA identified a number of common failings and recurring issues in police custodial facilities. In response the IPCA has conducted a dedicated review of about thirty incidents which occurred in police custody during the years 2011–2014. These incidents include cases of injury, self-harm and suicide attempts which have come to the attention of the IPCA as a result of a complaint, or a referral by the Commissioner of Police.

15. Issues identified in this review include a lack of alternatives to police custody for people who are vulnerable due to suspected mental impairment, intoxication or drug use; the police inability to access appropriate services for vulnerable people in custody; and inadequacies in the custodial management and training of officers in providing required standards of care.

16. During the reporting year, when the IPCA has visited Police facilities in the course of its ordinary work it has, where possible, conducted an unannounced visit and inspection of the attached custodial facility. A report has been provided to Police on the results of such visits.

17. The IPCA is also currently working with Police to develop National Standards for Police custodial facilities, as well as Police custodial practices and processes. This work is being undertaken to set up a model structure of custodial standards against which Police can audit their own compliance nationwide, and develop a capital expenditure plan to gradually close custodial facilities that do not comply with the standards, and upgrade others.

[5] This submission uses the generic term 'ill-treatment' to refer to any form of cruel, inhuman or degrading treatment or punishment.

OCC

18. The OCC have been developing the way they monitor CYF residences and are focusing on the systemic issues that can impact on how staff and the institution treat the children and young people in their care. This new approach aligns with the preventative element of the NPM function.

19. During 2013 and 2014 the OCC conducted three planned and one unannounced NPM visit at four Child Youth and Family ("CYF") residences. In addition, the OCC, in conjunction with the Ombudsman, made one planned visit to the Mother and Baby Unit ("MBU") in the Auckland Region Women's Corrections Facility. Across the five visits the OCC's overall assessment was that all facilities were compliant with OPCAT domains indicating that, in general, children and young people in New Zealand facilities are treated well, and their rights are upheld.

20. However, through its visits to CYF residences some clear themes emerged that point to areas for improvement that impact on the ability of facilities to deliver the preventative care and services children and young people require. These include:

a) strengthening management capability and leadership at residences:

Leadership sets the tone, culture, and expectations of the organisation which directly impacts on how staff manage young people.

b) strengthening staff capability:

When staff do not have adequate training and support they struggle to respond in optimal ways to some children and young people.

c) increase the quality of supervision for care staff:

The environment in residences is a challenging one for staff given the complexity of needs and the behaviours of the children and young people they manage. Excellent social work practice requires regular quality supervision that provides the opportunity for staff to learn from situations that have arisen, reflect on their practice and understand how they could improve their response to children and young people.

d) build cultural capability and provide quality cultural supervision:

Approximately 60-65 percent of children and young people in residences are Māori. It is therefore vital that culturally appropriate practice is integral to residence staff's service delivery.

e) develop a more young person/child centred approach:

Putting in place child focused systems and processes will better place residences to meet the needs and uphold the rights of children and young people and ensure that their treatment and protection is appropriate and proportionate. It will also ensure that young people have confidence in the grievance system, which is currently not as high as it should be in some residences.

f) increase the effectiveness of collaboration and partnerships with other agencies:

Access to many services such as health, education or training opportunities improves when CYF staff build positive and constructive relationships with other agencies.

Ombudsman

21. The Ombudsman undertook 22 formal inspections in 2013/2014. For the third consecutive year, segregation facilities in prisons remain a cause for significant concern with further evidence of variances in the way directed segregation is being applied to prisoners pursuant to section 58(1)(a) or (b) of the Corrections Act 2004. There continues to be significant issues in the accuracy of segregation paperwork and the amount of time prisoners are allowed out of their cells, particularly in the open air.

22. The Ombudsman also identified the use of seclusion in mental health facilities as an ongoing concern.

4 Implementation of CAT domestically

LOIPR: para 2 – in light of the previous recommendations of the Committee, please provide updated information on the enactment of comprehensive legislation to incorporate into domestic law all the provisions of the Convention. Also, please update on the establishment of a mechanism to ensure consistently the compatibility of domestic law with the Convention.

Relevant provision of the CAT: Article 2

SPT Recommendation:

The SPT recommends that the State party

(a) Consider withdrawing its reservations to UNCAT, article 14 and CRC Article 37(c);

(b) Put in place guidelines that restrict the wide discretion of the Attorney General with regard to prosecutorial decisions for crimes against torture in order to ensure that decisions whether or not to prosecute an offence of torture are based solely on the facts of the case;

(c) Reconsider the Bail Amendment Bill in the light of the SPT's concerns set out in para 21, above;

(d) Reconsider the Immigration Amendment Bill in the light of the SPT's concerns

WGAD:

Overall, legislation and policy concerning deprivation of liberty is well developed and to a high degree consistent with international human rights law and standards.

[However], the Working Group has particular concerns over the wider availability of preventive detention since the enactment of the Sentencing Act 2002, extended supervision orders under the Parole Act 2002, options for intellectually disabled offenders in the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003, and the Public Safety (Public Protection Orders) Bill currently before Parliament.

Recommended action:

The Government commit to reviewing all legislation relating to detainees within the next reporting period to ensure that it fully complies with New Zealand's international obligations.

22. Overall legislation and policy concerning detention is well developed and generally consistent with international standards. A notable gap remains in relation to the legislative protections available to young people aged 17 years. The Children, Young Persons and Their Families Act 1989 ("CYPF Act"), is the key piece of legislation relating to detention of children and young people up to the age of 17. Despite recommendations by the UN Committee on the Rights of the Child[6] and the Committee to extend the protection measures under the CYPF Act to include 17-year-olds, this has not occurred.

23. There has been a raft of recent corrections legislation which has extended restrictions upon the rights of people who are deprived of liberty. For example:

- The Electoral (Disqualification of Sentenced Prisoners) Amendment Act, passed in 2010, effectively disenfranchises all sentenced prisoners. Until this law change, all New Zealand prisoners serving a sentence of more than three years had been unable to vote while incarcerated.

- The Corrections Amendment Act 2013 makes a number of changes to corrections legislation. Among other things, that Act lessens the oversight processes relating to the use of mechanical restraints and extends the situations in which intrusive strip search powers may be used.

- The Prisoners' and Victims' Claims Act 2005 deals with the awarding of compensation to prisoners for breaches of their rights under the New Zealand Bill of Rights Act 1990, the Human Rights Act 1993 and the Privacy Act 1993. The Act restricts the awarding of compensation to exceptional cases and only to the

[6] Committee on the Rights of the Child's, *Concluding Observations in relation to New Zealand's 4th and 5th periodic reports*, CRC/C/NZL/CO/3-4, 201, http://www.converge.org.nz/pma/CRC-C-NZL-CO-3-4.pdf

extent that it is necessary to provide effective redress. Restrictions on compensation include that the plaintiff has first made reasonable use of available internal and external complaints mechanisms and that other remedies are used if they could provide effective redress. Compensation funds are subject to a claims process by victims, before becoming available to a prisoner.

24. The SPT voiced particular concern about the Bail Amendment Act which removes the presumption of bail for 17 – 20 years old who have previously served a sentence of imprisonment. "The SPT [was] concerned that these amendments will have a negative impact on the number of youth held on remand and the length of time spent on remand, which is already a matter of grave concern. Furthermore, the SPT [was] deeply concerned that the Bail Amendment Bill could exacerbate the disproportionately high number of Māori in prison, given the high rate of Māori recidivism, and the number of Māori currently on remand."[7]

25. The SPT also noted that the "2012 Immigration Amendment Bill may have the effect of depriving persons in need of protection of their liberty, based solely on the manner of their arrival in the State party."[8]

26. Furthermore the WGAD had particular concerns over the wider availability of preventive detention since the enactment of the Sentencing Act 2002 extended supervision orders under the Parole Act 2002, options for intellectually disabled offenders in the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003, and the Public Safety (Public Protection Orders).

27. In December 2014 the Parole (Extended Supervision Bill) was passed. The Bill extends the Extended Supervision Order ("ESO")[9] regime to offenders who have committed serious sexual offences and some serious violent offences. The range of qualifying offences is also expanded to include conspiracies and attempts (as well as any equivalent offences committed overseas). An ESO under the proposed regime can be renewed consecutively for 10 year periods.

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[7] Supra note 1 at 21.
[8] Ibid at 22.
[9] The purpose of an extended supervision order is to protect members of the community from those who, following receipt of a determinate sentence, pose a real and ongoing risk of committing sexual offences against children or young persons. (Section 107I of the Parole Act 2002).

28. Section 107C of the Parole Act 2002 provides that an offender may be subject to an ESO where the relevant offending pre-dated the commencement of the ESO scheme in 2004. This could be viewed as a retroactive penalty in conflict with New Zealand's international human rights obligations. The Bill further extended this regime by allowing an ESO to be renewed, which in essence permits an indeterminate punishment.

29. Taken cumulatively these changes impinge on the rights of detainees and arguably breach New Zealand's international obligations. **It is recommended that the Government commit to reviewing all legislation relating to detainees within the next reporting period to ensure that it fully complies with New Zealand's international obligations.**

5 NPM functions

LOIPR: para 8 – Please provide information on the functioning of the National Protective Mechanism and whether it has been provided with the necessary human, material and in particular financial resources to enable it to fully comply with its mandate.

Relevant provision of the CAT: Article 2

SPT Recommendation:

The SPT reminds the State party that the provision of adequate financial and human resources constitutes an ongoing legal obligation of the State party under article 18.3 of the OPCAT. It recommends that the State party:

(a) Ensure that the NPMs enjoy complete financial and operational autonomy when carrying out their functions[4] and that they are able to freely determine how to use the resources available to them;

(b) As a matter of priority, increase the funding available in order to allow the NPMs to effectively implement their OPCAT mandate throughout the country;

(c) Ensure that the NPM is staffed with a sufficient number of personnel so as to ensure that its capacity reflects the number of places of detention within its mandate, as well as being sufficient to fulfil its other essential functions under the Optional Protocol;

(d) Provide the NPMs with the means to ensure that they have access to the full range of relevant professional expertise, as required by OPCAT.[5]

WGAD

The Working Group also recommends that the National Preventive Mechanisms (in the New Zealand Human Rights Commission under the Optional Protocol to the Convention against Torture) are appropriately resourced to monitor all places of deprivation of liberty, including rest homes and secure facilities.

Recommended actions:

The NPMs recommend that:

- funding levels should be increased without delay to cover the actual costs of OPCAT work and to enable NPMs to carry out more site visits and to establish a coordinated

mechanism to engage the services of experts to assist with those visits; and

- the Government commit to reviewing the scope of the OPCAT mandate in New Zealand with a view to identifying ways to address the gaps in monitoring all places where people are deprived of their liberty. Any increase in scope would need to be properly funded.

30. An overarching challenge that NPMs have struggled with, is the resources available for OPCAT monitoring. Since ratification of the OPCAT, NPMs have received very limited additional resourcing to carry out their OPCAT functions. To manage within the funding available, NPMs have smaller visit teams and undertake visits with less frequency than they would like (or believe is envisioned by the OPCAT.

31. The Children's Commissioner, for example, has received no funding for taking on its NPM role, which it has funded from other work streams. The funds allocated to the IPCA cover 34 percent of their respective OPCAT costs, and in the past they have also covered the difference, but more recently have reduced their NPM activities to align with the actual funding provided by government. For these NPMs resource pressures are significant, and inhibit the full performance of their OPCAT function.

32. The Ombudsman is in a slightly different but equally difficult position. Although all of its OPCAT work is funded it limited in its ability, within its existing budget, to monitor prisons and mental health facilities with the frequency, comprehensiveness and depth that is expected under OPCAT. Moreover, in addition to the 104 places of detention which the Ombudsman's Office currently monitors, there are a further 138 locked aged care facilities and dementia units that may fall within the Ombudsman's mandate in respect of health and disability places of detention. In order to adequately monitor the facilities that it currently inspects, together with these additional facilities, the Ombudsman would need additional funding.[10]

[10] Note that Parliament is involved in funding of the Ombudsman. Both government and Parliament need to commit to provision of funding to enable the Ombudsman to monitor additional facilities.

33. The SPT expressed concern that the significant resource constraints facing the NPMs severely impedes the full implementation of New Zealand's international obligations: At paragraph 12 of its report to the New Zealand Government the SPT stated: [11]

Most of the components of the NPM have not received extra resources since their designation to carry out their OPCAT mandate which, together with general staff shortages, have severely impeded their ability to do so. Moreover, the Children's Commissioner and IPCA reported that their funding was earmarked for statutory functions, which excluded NPM-related work. In this regard, the SPT was concerned to learn that the OPCAT mandate - an international obligation - was not considered by the State party to be a 'core function' of the bodies designated as the NPM. The SPT is also concerned that inadequate funding might be used – or might be perceived by the bodies themselves as being used - to pressurise components of the NPM to sacrifice their OPCAT- related work in favour of other functions. Should the current lack of human and financial resources available to the NPM not be remedied without delay, the State party will inevitably find itself in the breach of its OPCAT obligations

34. The SPT was equally concerned about the current number of staff and the lack of specific expertise in some areas:[12]

Whilst the SPT was impressed by the commitment and professionalism of NPM experts, it was concerned that the number of staff were inadequate, given the large numbers of places of detention within their mandates. It was also concerned at the lack of NPM expertise in medical and mental health issues.

35. **The NPMs recommend that funding levels should be increased without delay to cover the actual costs of their OPCAT work and to enable them to carry out more site visits and hire the services of experts to assist with those visits.**

NPM mandate

36. A substantial number of areas where people are deprived of their liberty are not currently monitored by NPMs. This includes facilities where people reside subject to

[11] Supra note 1 at 12.
[12] Ibid at 13.

a legal substitute decision-making process, such as locked aged care facilities, dementia units, compulsory care facilities, community-based homes and residences for disabled persons, and other situations where children and young people are placed under temporary state care or supervision. People detained in these facilities potentially are vulnerable to ill-treatment that can remain largely invisible.

37. Currently, an estimated 138 aged care providers with locked facilities potentially fall within the scope of OPCAT. Care agencies note that with a rapidly aging population the health system is already under pressure as the sector is reaching capacity. These and other factors potentially impact on the quality of care provided to the elderly and increase the risk of ill-treatment, including over-medication and pharmaceutical restraint.[13] The WGAD noted "that despite the increasing phenomenon of older persons staying in residential care, there is very little protection available to ensure that they are not arbitrarily deprived of their liberty against their will."[14] It called on the government "to develop a comprehensive, human rights-based legal framework governing the provision of services to older persons suffering from dementia or other disabilities in residential care."[15]

38. The Committee on the Rights of Persons with Disabilities in April 2014 identified that the detention of persons with disabilities, whose legal capacity has been denied, in institutions against their will (either without their consent or with the consent of a substitute decision-maker), results in risks of ill-treatment, including the exercise of seclusion and restraint and un-consented medical treatment.[16]

39. A 2013 study highlighted the hidden nature of ill-treatment directed against disabled persons within the community.[17] People in home-care/live-in support situations may have limited ability to communicate their needs, or any concerns about their treatment, or may be reliant on the abuser for day-to-day support and assistance.

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[13] See *Elder abuse and neglect*, Families Commission (2008), p.16.
[14] United Nations Working Group on Arbitrary Detention, *statement at the conclusion of its visit to New Zealand (24 March -7 April 2014).*
[15] Ibid.
[16] See CRPD General Comments No.1 (2014), p.10. New Zealand ratified the Convention on the Rights of Persons with Disabilities (CRPD) in 2008.
[17] *The Hidden Abuse of Disabled People Residing in the Community: An Exploratory Study,* Roguski, M (18 June 2013). http://www.communityresearch.org.nz/wp-content/uploads/formidable/Final-Tairawhiti-Voice-report-18-June-2013.pdf.

40. These facilities are all subject to New Zealand's international obligations in the ICCPR[18] and CAT[19] and may be subject to various types of general monitoring under the auspices of different government agencies. However, the lack of rigorous oversight from an OPCAT specific perspective is concerning.

41. The NPMs would welcome guidance from the Committee on these issues and **urge the Government to prioritise reviewing the scope of the OPCAT mandate in New Zealand with a view to identifying ways to address the gaps in monitoring all places where people are deprived of their liberty. Any increase in scope would need to be properly funded.**

[18] ICCPR Article 7.
[19] CAT Article 16.

6 Over-representation of Māori in the criminal justice system

LOIPR: para 18 – In light of the previous recommendations of the Committee, please provide an update on … any legal, administrative and judicial measures taken to reduce the over-representation of Māori and Pacific Islands people in prison.

Relevant provision of the CAT: Article 11

SPT Recommendation:

The SPT recommends that the State party replicate and further develop existing programmes, including Māori literacy programmes, aimed at reducing Māori recidivism. The State party should focus on programmes which support reformation and reintegration, produce tangible outcomes and focus on preventing reoffending.

WGAD:

We recommend that a review is undertaken of the degree of inconsistencies and systemic bias against Māori at all the different levels of the criminal justice system, including the possible impact of recent legislative reforms. Incarceration that is the outcome of such bias constitutes arbitrary detention in violation of international law.

The Working Group has studied the police review and the 'Turning the Tides' initiative, and the review it recommends would take further the work of the police, extending it to other areas of the criminal justice system. The Working Group also considers that the search needs to continue for creative and integrated solutions to the root causes which lead to disproportionate incarceration rates of the Māori population.

Recommended action:

It is recommended that the Government commit to addressing the overrepresentation on Māori in the criminal justice system by both:

- drawing on the approach in *Turning the Tides* to develop partnerships with iwi across all areas of the criminal justice system; and
- stepping up its efforts to address the root causes which lead to disproportionate

incarceration rates of Māori.

42. A recent report from the New Zealand Police, *A review of Police and Iwi/Māori relationships: working together to reduce offending and victimization among Māori* ("Review"), confirmed that "while Māori only make up 14% of population, Māori comprise 45% of arrests, 38% of convictions and over 50% of prison inmates."[20] Māori are significantly more likely than non-Māori to be reconvicted and re-imprisoned.

43. The Review identified Māori women as disproportionately represented in the criminal justice system, noting that "the age-adjusted imprisonment rate for Māori men is about seven times that of New Zealand European men, and for Māori women, nine times the rate"[21]

44. The Review further acknowledged that "on average, Māori experience more factors which contribute to offending and victimisation: low education, low skills, unemployment, drug and alcohol abuse, and living in deprived neighbourhoods. These are often linked and mutually reinforcing so that they can create a vicious cycle in people's lives."[22] The factors which increase the likelihood of exposure to the criminal justice system ("CJS") can then be compounded by bias within the CJS. This can take the form of direct discrimination and/or indirect discrimination.[23]

45. As the WGAD acknowledged, therefore, it is not only important to reduce bias within the system but also to address those underlying risk factors which increase the likelihood of exposure to the criminal justice system. The WGAD stated:[24]

the search needs to continue for creative and integrated solutions to the root causes which lead to disproportionate incarceration rates of the Māori population.

46. Over the last three years, as a result of the *Drivers of Crime* initiative – a whole of government approach to reduce offending and victimisation – the number of young Māori appearing in court has reduced by 30%.[25] Building on the *Drivers of Crime*

[20] http://www.police.govt.nz/sites/default/files/publications/review-of-police-and-iwi-maori-relationships.pdf at i.
[21] Ibid. at 25.
[22] Ibid at i.
[23] Ibid.
[24] Supra note 10.
[25] Minister of Justice, *Opening remarks to the UN Human Rights Council*, January 2014.

initiative, the Government launched the Youth Crime Action plan in October 2014. This plan aims to reduce youth crime and recidivism.

47. In addition, a recent crime and crash prevention strategy, *The Turning of the Tide*,[26] sets targets for reduced Māori offending, repeat offending and apprehensions. It commits police and Māori to working together to achieve common goals by 2018. These goals are:

- 10 percent decrease in the proportion of first-time youth and adult offenders who are Māori;
- 20 percent decrease in the proportion of repeat youth and adult victims and offenders who are Māori;
- 25 percent decrease in Police apprehensions (non-traffic) of Māori that are resolved by prosecution; and
- 20 percent reduction in Māori crash fatalities (without increasing the proportion of Māori injured in serious crashes).

48. Although these initiatives are achieving some very positive results, the over-representation of Māori in all levels of the criminal justice system in New Zealand remains an enduring issue.

49. **It is recommended that the Government commit to addressing the overrepresentation on Māori in the criminal justice system by both:**

- **drawing on the approach in *Turning the Tides* to develop partnerships with iwi across all areas of the criminal justice system; and**
- **stepping up its efforts to address the root causes which lead to disproportionate incarceration rates of Māori.**

[26] http://www.police.govt.nz/sites/default/files/resources/the-turning-of-the-tide-strategy.pdf

7 Mental Health in places of detention

LOIPR: para 31 - In light of the previous recommendations of the Committee (para 9), please indicate whether the mental health screening and the establishment of the mental health status of prisoners upon arrival in prisons is carried out by qualified personnel in addition to the registered primary health nurses. Please provide updated information on the number of waitlisted acutely mentally unwell prisoners who cannot be accommodated in the District Health Board (DHB) forensic inpatient beds and on the measures taken by the State party to remedy the situation and place them in appropriate health-care facilities.

Relevant provision of the CAT: Article 16

SPT Recommendation:

The SPT recommends that a comprehensive national policy and strategy be developed to ensure appropriate access to health care and mental health care services across the criminal justice system. A significant increase in provision of mental health services is required to cope with the high number of detainees with mental health problems.

Recommended action:

It is recommended that the government continue to extend measures to improve the mental health care and treatment of people in detention, and fund NPMs to retain adequate medical and psychiatric expertise.

50. The high prevalence of mental health issues amongst people in detention, and their access to care and treatment in detention are longstanding issues. Sixty to seventy percent of people in prison have either a learning disability or mental illness.

51. In 2012 the Ombudsman completed an investigation into prison healthcare,[27] identifying deficiencies in the management of mentally unwell prisoners, and finding that aspects of the management of prisoners at risk of self-harm could be detrimental to their long term mental health. In general, it was found that services were insufficiently responsive to the diverse needs of prisoners requiring mental health care.

52. Also in 2012, the IPCA carried out a review of deaths in police custody,[28] highlighting the effect of alcohol, drugs and mental health issues on people in Police custody as areas requiring attention. The 20 recommendations made by the IPCA included "to work towards establishing detoxification centres to provide appropriate care for heavily intoxicated people, and expansion of the watch-house nurse programme to help identify and manage detainees with mental health, alcohol or other drug issues."[29]

53. Despite some very positive developments, such as increased adolescent mental health services, improved screening for mental health issues in prisons, efforts to reduce seclusion, and a successful pilot initiative placing mental health nurses in Police watch houses, overall, mental health issues in detention remain a concern. An ongoing concern is that detainees experiencing mental illness should be professionally treated in a therapeutic environment, rather than managed in a custodial setting.

54. Complex issues around people in detention who require mental health care pose significant challenges. As noted above, NPMs to date have lacked sufficient resources to be able to retain adequate medical and psychiatric expertise to assist with monitoring of health services in detention. **It is recommended that the Government continue to extend measures to improve the mental health care and treatment of people in detention, and fund NPMs to retain adequate medical and psychiatric expertise.**

[27] http://www.ombudsman.parliament.nz/system/paperclip/document_files/document_files/456/original/own_motion_prisoner_health.pdf?1349735789
[28] http://ipca.govt.nz/Site/media/2012/2012-June-30-Deaths-in-Custody.aspx
[29] Ibid.

Seclusion

55. NPMs recognise that within a detention context it may be necessary to temporarily separate a person from other detainees for their own or others' safety. Human rights standards require that the use of segregation, seclusion or other conditions amounting to isolation must be limited and accompanied by safeguards, such as monitoring, review and appeal processes. Because of the potentially harmful effects on a person's physical and mental health, human rights minimum standards are premised on the notion that conditions amounting to 'isolation' should be a measure of last resort and used for as short a time as possible.

56. In a mental health context there have been improvements in reporting and transparency around the use of seclusion, including closer monitoring and regular publication of data. The Ministry of Health has published guidance on the use of seclusion and night safety procedures in mental health inpatient services. The Ministry also advises that further guidelines on the use of restraint and seclusion practices are planned for 2015, which will have an increased emphasis on a human rights approach to the provision of treatment and the continued reduction of restrictive practices such as seclusion and restraint. However, there are still indications that a small number of patients are secluded for lengthy periods.[30]

57. **It is recommended that the Government develops a cross-agency plan to improve capability for the appropriate management of individuals with high and complex needs.**

[30] Supra note2.

APPENDIX 1:

Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to New Zealand; and

Associated New Zealand Government response.

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Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to New Zealand*,**

* In accordance with the decision of the Subcommittee at its fifth session regarding the processing of its visit reports, the present document was not edited before being sent to the United Nations translation services.

** In accordance with article 16, paragraph 1, of the Optional Protocol, the present report was transmitted confidentially to the State party on 5 November 2013. On ... 2014, the State party communicated its decision to make the report public..

Contents

I. Introduction

1. In accordance with its mandate under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), the UN Subcommittee on Prevention of Torture (SPT) conducted a visit to New Zealand from 29 April to 8 May 2013.[1]

2. The SPT members conducting the visit were: Mr. Malcolm Evans (Head of delegation), Mr. Arman Danielyan, Mr. Paul Lam Shang Leen, Mr. Petros Michaelides, Ms. June Caridad Pagaduan Lopez and Ms. Aneta Stanchevska.

3. The SPT was assisted by four Human Rights Officers and one logistics assistant from the Office of the United Nations High Commissioner for Human Rights (OHCHR).

4. The SPT visited 35 places of deprivation of liberty, including police stations, District Court cells, prisons, Defence Force facilities, Youth Justice Residences and Immigration facilities in Wellington, Auckland, Christchurch, Nelson, Blenheim, Rotorua, Hastings, and a number of rural locations (see Annex I). The SPT also held meetings with relevant authorities, the National Preventive Mechanism and members of civil society (see Annex II). The SPT wishes to thank everyone for the valuable information provided.

5. At the conclusion of the visit, the SPT orally presented its confidential preliminary observations to the New Zealand authorities. This report contains the SPT's findings and recommendations concerning the prevention of torture and ill-treatment of persons deprived of their liberty in the State party. It uses the generic term "ill-treatment" to refer to any form of cruel, inhuman or degrading treatment or punishment.[2]

6. The SPT requests that the New Zealand authorities reply to this report within six months from the date of its transmission, giving a full account of the actions they have taken to implement the recommendations made.

7. The SPT report will remain confidential until such time as the authorities decide to make it public, in accordance with OPCAT, article 16(2).

8. The SPT wishes to draw the State party's attention to the Special Fund established by OPCAT, article 26, to which applications may be made for funding the implementation of recommendations contained in those SPT reports which have been made public.[3]

9. The SPT wishes to express its appreciation for the excellent cooperation and facilitation of the visit. The SPT enjoyed unrestricted private access to those persons deprived of their liberty whom it wished to meet, and the records it wished to examine. However, there was some delay in gaining access to places of detention at weekends. Furthermore, the Devonport Naval Base was not aware of the SPT's visit to New Zealand, resulting in delayed access.

10. The SPT wishes to record that it did not encounter any consistent allegations of torture or physical ill-treatment in the places of detention visited.

[1] For information about the SPT, see: http://www2.ohchr.org/english/bodies/cat/opcat/index.htm.

[2] See Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), Article 16.

[3] http://www2.ohchr.org/english/bodies/cat/opcat/SpecialFund.htm.

II. National Preventive Mechanism

11. New Zealand ratified the OPCAT in 2007 and, in fulfilment of OPCAT article 3, the Amendment Bill to the Crimes of Torture Act 1989 designated five existing institutions as its National Preventive Mechanism (NPM), these being: the Ombudsmen's Office, the Independent Police Conduct Authority (IPCA), the Children's Commissioner, and Inspector of Service Penal Establishments (ISPE) of the Office of the Judge Advocate General of the Armed Forces. The Human Rights Commission has a coordinating role. Whilst the legislative framework is reflective of OPCAT criteria, the practical efficiency of the NPM remains a challenge.

12. *Resources and independence*. The SPT delegation spent a day with the NPM and was pleased to hear that it enjoyed good overall relations with the authorities. Nevertheless, the SPT is of the view that the situation regarding the NPM within the State party has reached a critical point. Most of the components of the NPM have not received extra resources since their designation to carry out their OPCAT mandate which, together with general staff shortages, have severely impeded their ability to do so. Moreover, the Children's Commissioner and IPCA reported that their funding was earmarked for statutory functions, which excluded NPM-related work. In this regard, the SPT was concerned to learn that the OPCAT mandate - an international obligation - was not considered by the State party to be a 'core function' of the bodies designated as the NPM. The SPT is also concerned that inadequate funding might be used – or might be perceived by the bodies themselves as being used - to pressurize components of the NPM to sacrifice their OPCAT-related work in favour of other functions. Should the current lack of human and financial resources available to the NPM not be remedied without delay, the State party will inevitably find itself in the breach of its OPCAT obligations.

13. *Staffing*. Whilst the SPT was impressed by the commitment and professionalism of NPM experts, it was concerned that the number of staff were inadequate, given the large numbers of places of detention within their mandates. It was also concerned at the lack of NPM expertise in medical and mental health issues.

14. The SPT reminds the State party that the provision of adequate financial and human resources constitutes an ongoing legal obligation of the State party under article 18.3 of the OPCAT. It recommends that the State party:

(a) Ensure that the NPMs enjoy complete financial and operational autonomy when carrying out their functions[4] and that they are able to freely determine how to use the resources available to them;

(b) As a matter of priority, increase the funding available in order to allow the NPMs to effectively implement their OPCAT mandate throughout the country;

(c) Ensure that the NPM is staffed with a sufficient number of personnel so as to ensure that its capacity reflects the number of places of detention within its mandate, as well as being sufficient to fulfil its other essential functions under the Optional Protocol;

(d) Provide the NPMs with the means to ensure that they have access to the full range of relevant professional expertise, as required by OPCAT.[5]

[4] SPT guidelines on NPMs, CAT/OP/12/5, para. 12.

[5] OPCAT, article 18.2.

15. The SPT wishes to be informed, as a matter of priority, of the steps taken to provide the NPM with adequate financial and human resources sufficient to allow for its effective operation in accordance with the OPCAT.

16. *Institutional visibility and scope of mandates.* The SPT believes that the status and visibility of the NPMs should be enhanced. There are also issues concerning gaps and overlaps in the NPMs' mandates which need addressing. For example, it appears that 161 facilities for the care of persons with dementia are not covered by the NPM. In also seems that the rigid mandates of NPMs lead to missed opportunities for synergies and cooperation. For instance, the Children's Commissioner monitors Youth and Justice Residences but has no mandate to consider the treatment of minors and juvenile offenders in police custody, immigration or penitentiary institutions. The SPT believes that the Children's Commissioner ought to be able to engage in thematic cross-cutting studies with regard to the treatment of minors deprived of liberty. Finally, the SPT notes that the NPMs have been engaging with the authorities and civil society on a bilateral basis rather than as a collegial body of experts.

17. Given that the State Party is under a continuing obligation regarding the effective functioning of the NPM, the SPT recommends that the authorities:

(a) Organize as a matter of priority a meeting with the NPMs collectively in order to discuss in depth their challenges, including gaps in their respective mandates;

(b) Take steps to enhance the status and recognition of the NPM as a key collegial body for preventing torture and ill-treatment;

(c) Support the NPMs as they seek to develop and maintain a collective identity through, *inter alia*, joint visits and joint public reports, harmonized working methods, shared expertise and enhanced coordination;

(d) Improve channels of communication with the NPMs regarding the implementation of recommendations arising from NPM visits;

(e) Involve the NPMs collectively in the implementation of the recommendations contained in this SPT report;

(f) Encourage dialogue and better connectivity between the NPMs and civil society.

III. Overarching issues

18. The SPT would like to comment on a number of overarching systemic issues relating to the treatment of persons deprived of liberty.

A. Legal framework

19. The SPT notes that the New Zealand Bill of Rights Act (BORA) protects the right of everyone not to be subjected to torture or to cruel, degrading, or disproportionately severe treatment or punishment.[6] This prohibition is reiterated in the 1989 Crimes of Torture Act

[6] Article 8 of BORA.

(COTA) which also provides for penalties for the crimes of torture.[7] The prohibition of torture is complemented by a comprehensive normative framework in the area of criminal justice. However, the SPT is deeply concerned at legislative gaps, which reflect the State party's reservations to UNCAT, article 14, and to the Convention on the Rights of the Child (CRC), article 37(c). The reservation to UNCAT, article 14, unduly restricts the rights of victims of torture to fair and adequate compensation, including the means for full rehabilitation.[8] The reservation to CRC, article 37 (c), allowing mixing of young and adult prisoners in some circumstances, compromises the right of juveniles to be accorded treatment appropriate to their age.

20. The SPT is also concerned that COTA, section 12 confers wide discretion to the Attorney General to decide whether or not to prosecute a crime against torture. Section 12 stipulates that "no proceedings for the trial and punishment of any person charged with a crime" of torture, any inchoate offence or is accessory after the fact to the offence of torture or related to torture "shall be instituted in any court except with the consent of the Attorney-General". The SPT learnt with deep concern that the Attorney General can refuse consent to prosecute a crime of torture solely on the grounds that it is in the public interest not to do so. The SPT believes that it can never be in the public interest to decline consent to prosecute a crime of torture.

21. The SPT notes that the granting of bail in any form is, ultimately, an essentially judicial function and the legislative framework which makes provision for it must reflect basic principles of the rule of law, including the separation of powers. The SPT is deeply concerned at the proposed Bail Amendment Act[9] which removes the presumption of bail for 17 – 20 years old who have previously served a sentence of imprisonment. The bill also proposes to reverse the presumption in favour of bail for Class A drug offenders, placing the burden of demonstrating why it should be granted on the applicant. The SPT is concerned that these amendments will have a negative impact on the number of youth held on remand and the length of time spent on remand, which is already a matter of grave concern. Furthermore, the SPT is deeply concerned that the Bail Amendment Bill could exacerbate the disproportionately high number of Māori in prison, given the high rate of Māori recidivism, and the number of Māori currently on remand.

22. The SPT is also concerned that the 2012 Immigration Amendment Bill proposes the mandatory detention of asylum seekers and persons who fall within the statutory definition of a "mass arrival", namely those arriving in a group of more than 10. The SPT is concerned that the proposed amendments may have the effect of depriving persons in need of protection of their liberty, based solely on the manner of their arrival in the State party. The SPT struggles to see how, for instance, the arrival of two families of five persons constitutes a 'mass arrival' necessitating such treatment. **The SPT also notes that, in line with the International Covenant on Civil and Political Rights, article 9, no person should be subjected to arbitrary arrest or detention; the mandatory arrest and detention of individuals solely based on the manner of their arrival in the State party is arbitrary and it does not accord with international standards on the treatment of persons in need of international protection.**

[7] Article 3 of the COTA.

[8] Article 5 of the COTA confers the power on the Attorney General to consider whether it would be appropriate for the Crown to pay compensation to the victim of torture or any member of the victim's family.

[9] The Bill proposes to amend the Bail Act of 2000.

23. The SPT recommends that the State party

(a) Consider withdrawing its reservations to UNCAT, article 14 and CRC article 37(c);

(b) Put in place guidelines that restrict the wide discretion of the Attorney General with regard to prosecutorial decisions for crimes against torture in order to ensure that decisions whether or not to prosecute an offence of torture are based solely on the facts of the case;

(c) Reconsider the Bail Amendment Bill in the light of the SPT's concerns set out in para. 21, above;

(d) Reconsider the Immigration Amendment Bill in the light of the SPT's concerns set out in para. 22, above.

B. Institutional framework

24. *Detainee Classification.* Following its numerous visits to places of detention and interviews with staff and persons deprived of liberty, the SPT has concluded that the complexity of the existing system of classification undermines the rights of detainees and weakens the protection against torture and ill-treatment. The SPT notes with approval that in all prisons visited there was strict separation between pre-trial and sentenced detainees. However, the SPT observed that the complex categorization system implied managing not two but at least five different categories of inmates, namely, remand accused, remand convicted, sentenced, voluntary segregated and youth. The situation is further compounded by the parallel system of security classification. The practical result is that detainees may be subjected to far greater restrictions in practice than their categorisation would suggest, as staff struggles to find means of keeping them separate during the normal day to day running of detention facilities (including court cells, police stations and transport vehicles). Similarly, the SPT noted that differences in classification do not necessarily mean there is a difference in regime, since prisoners belonging to different categories, although physically separated, were often subjected to the same rules in terms of hours of lock-down, food, exercise etc. In the light of the above, the SPT is of the view that prolonged exposure to inappropriate regime conditions, such as those which it observed for remand prisoners and youth, can constitute ill-treatment.

25. *Remand prisoners.* The SPT noted with great concern that in all prisons visited, the regime applicable to pre-trial detainees was inappropriate, given their unconvicted status and the often lengthy periods for which they were detained. For instance, in Rimutaka prison, the SPT heard that remand prisoners were routinely locked-down for up to 19 hours per day while awaiting trial, in addition to the lack of appropriate facilities for exercise and delays in access to medical assistance. The SPT saw for itself that the periods of "out of cell time" were, in practice, significantly shorter than was claimed.

26. *Youth in prisons.* The classification system, combined with limited space and limited staff numbers, undermines the full implementation of juvenile justice standards. During its visit to Mount Eden Prison, the SPT discovered with great concern that youth pre-trial detainees were de facto penalized by the system, despite their vulnerability, since they were subject to 19 hours lock-downs, whereas convicted and sentenced adult prisoners in other wings of the same prison were subject to a more favourable regime. The lock-downs were the result of youth and adult prisoners occupying the same wing. The SPT believes that there is no justifiable reason why there should not be a dedicated Youth unit at Mount Eden Prison, which could offer a significantly more favourable and more appropriate regime.

27. *Impact of the classification system on Parole.* The SPT learned that it is necessary to have completed a number of training and rehabilitation programmes before parole can be granted. However, the SPT noted with concern that there was a shortage of places on such programmes, especially in women prisons. The practical difficulties of managing prisoners' movements in accordance with the classification system had the effect of impeding some detainees to attend courses and thus prevented them from being released on parole to which they would otherwise have been eligible, consequently increasing the length of their imprisonment.

28. The SPT recommends that the State party

(a) Review the current categorization system in order to ensure that it does not have the practical effect of worsening regime conditions;

(b) Review the regime conditions of remand prisoners and youth urgently in order to ensure that it is appropriate to their legal status and age;

(c) Eliminate the barriers that hamper detainees accessing Parole.

29. *Prolonged detention in police stations.* The SPT was particularly concerned with the conditions of detention in some police stations gazetted as jails, which can hold detainees on remand for up to seven days. The regime for those remanded in custody was reportedly better than that for arrested persons in terms of, for instance, visiting time, access to showers and books, and the SPT noted the efforts taken to reduce the time spent in police custody to the minimum possible. Nevertheless, the SPT was concerned at the inadequacy of these facilities (see also paragraphs 68 and 69).

30. The SPT recommends that the State party

(a) Consider alternatives to the use of the police stations gazetted as jails until they are renovated;

(b) Prioritise police stations gazetted as jails in infrastructure renovation programmes;

(c) Ensure that there are appropriate means of segregating detainees when new facilities are built or existing facilities renovated.

31. *Trial within a reasonable period of time.* BORA, Section 23 guarantees the right of those arrested to be charged promptly or released. Furthermore, section 24 provides that those charged shall have the right to be released on reasonable terms and conditions unless there is just cause for continued detention. The SPT welcomes the fact that in most police stations it visited, bail was swiftly granted by police officers when appropriate, avoiding excessive use of police custody. However, the SPT noted that those remanded in custody, and those awaiting sentencing, could spend lengthy periods in remand prisons, and that the periods involved appear to be getting longer. For example, the SPT documented one case at Mount Eden Prison in which a prisoner held on remand for 556 days was subsequently sentenced to three years imprisonment. Since the period spent on remand was deducted from the sentence, de facto, the detainee spent virtually his entire sentence on remand, although the detainee would not have been eligible for release as he would not have been able to undertake the mandatory programmes, which are only open to sentenced prisoners. The SPT is concerned that detention on remand is not used only as a measure of last resort and is often unduly prolonged, a situation exacerbated by the conditions of detention (see paragraphs 25 and 91-99). The SPT also notes with concern that there appear to be increasing delays within the Court system which also need to be addressed.

32. The SPT recommends that the State party take appropriate administrative and legislative measures, to ensure (a) that pre-trial detention is used as the last resort; that is, when necessary to prevent the commission of further offences or to ensure the integrity of the trial process, and (b) that the period of pre-trial detention is not excessively prolonged.

33. *High rates of incarceration and reoffending.* The SPT notes that the authorities have indicated that there are significant declines in the overall numbers of recorded offences and prosecutions. It is, however, concerned that this has not led to a reduction in the prison population, which suggests there may be an over-use of custodial sentences. Moreover, given that reoffenders constitute the largest proportion of the prison population, more needs to be done if the ambitious governmental plan to reduce reoffending by 25 % by 2017 is to be achieved. The SPT believes that this must include a greater focus on programmes of social reintegration, as well as more active involvement with the Māori community, including strengthening indigenous initiatives and developing community-based Māori-specific programmes focusing on prevention of reoffending.

34. The SPT recommends that the State party investigates the reasons for the current high incarceration rates, and explores the possibility of expanding the use of non-custodial measures. The SPT also recommends that greater emphasis be placed on reintegration programmes, as indicated in para. 33, above.

35. *Safety and security.* The SPT heard that as a result of a recent increase in assaults on prison staff the Corrections Department has introduced a "zero tolerance approach". The SPT believes that any such zero tolerance policy should extend to anyone responsible for assault within prison, and not only be focussed on staff safety. The SPT wonders whether the increasingly strict prison regime, lack of employment opportunities, lost parole, long hours of lock down, etc., may have a bearing on increased levels of violence. The SPT itself heard prisoners' concerns regarding a perceived lack of transparency concerning decisions on security classification as well as their frustrations regarding recent policy changes concerning TVs and smoking, which had not been well explained. Better communication between prison management and detainees might contribute to the lessening hostility and improving relations.

36. The SPT recommends that the State party explores the causes of increased prison violence and that its response should take account of both staff and prisoner's safety, promote a positive prison culture, and include improved communication between staff and detainees.

37. The SPT is particularly concerned that extended lock-downs are often used as a form of collective punishment for all those in a block or unit where there has been an incident, regardless of their involvement in an alleged offence.

38. The SPT recommends that the State party ensures that only those responsible for incidents in prisons are penalised as a result of them.

39. *Voluntary segregation.* The SPT noted with concern the high number of persons held in Management Units on voluntary segregation. Whilst acknowledging that this is intended to protect at-risk prisoners, the SPT remains concerned that they were held in conditions similar to those reserved for disciplinary confinement. It is also concerning that so many consider themselves to be at risk in more open settings within the prisons. Such measures, especially if extensively prolonged, may prejudice vulnerable inmates whose behaviour does not merit harsher material conditions or stricter security measures. The SPT further observed that when there was only one prisoner of a given security category in voluntary segregation within the Management Unit, they were, de facto, being held in semi-permanent solitary confinement.

40. The SPT recommends that the State party intensify its efforts to tackle inter-prisoner violence by addressing its causes, including problems arising from gang cultures, the lack of purposeful activities, substance abuse, restricted out of cell time, etc., as well as through staff training. The State party should ensure that the protection of vulnerable detainees is not achieved at the cost of their own detention conditions.

41. Further recommendations concerning police custody and the penitentiary system will be made in the Part IV C.

C. Fundamental safeguards

Information on rights of accused or detained persons

42. The State party's domestic law contains a litany of safeguards for arrested or detained persons, which include, inter alia, the right to be informed at the time of their arrest or detention of their rights and of the reasons for their arrest or detention.[10] The SPT learnt from its interviews that the police do seek to do so, although some interviewees claimed they had not been informed about their rights. The SPT did not see information on the rights of arrested persons displayed at police stations, with the exception of Wellington Central and Porirua Police Stations, where there were posters setting out the rights of persons detained by the police and about the IPCA, but in positions where they could not be easily read before a person had been processed and assigned a cell (see also paras. 72-73). Turning to prisons, the SPT notes that information on the rights and duties of young persons was not always readily available in the central areas of the unit blocks or in cells.

43. The SPT recommends that the State party ensure that the police informs arrested or detained persons of the reasons and their rights at the time of their arrest or detention. The State party should ensure that information on the rights of persons deprived of their liberty is displayed at police stations where it can be read easily. The SPT also recommends that "admission information" be displayed inside prisons to young persons so that they may be aware of their rights, entitlements, as well as the organisation and daily management of the prison units.

Complaint mechanisms

44. The SPT is concerned that it was unable to easily determine the current status of particular complaints lodged by prisoners against prison staff. Whilst the State party's prisons and police stations operate an Integrated Offender Management System (IOMS), which shows that complaints were consistently forwarded to prison managers for them to consider, the outcome of that consideration was not clear in a number of those cases which the SPT examined in detail. This suggests that not all complaints are being considered promptly or properly. The SPT is also concerned that no proper distinction is made between a request and a complaint, both being submitted on the same forms and processed in the same way, and that these forms are not treated confidentially. As a result, simple requests are not dealt with quickly, and serious complaints can be trivialised.

45. The SPT recommends that the State party improve the complaints and appeals system by differentiating between requests and complaints, treating them confidentially. Unless it is manifestly frivolous or groundless, every request or complaint should be considered and responded to promptly.[11] The State party should

[10] BORA, Article 23.

[11] Rule 36(4) of the SMR.

also ensure that records of requests or complaints, including their outcomes, should be available to monitoring bodies.

Registers

46. While commending the State party for the use of IOMS the SPT observed that some staff in both police stations and prisons did not seem confident when using it and were unable to retrieve data from the system. The SPT is concerned that this lack of skills by personnel to effectively operate the system might affect data entry and record keeping of prisoners' information.

47. The SPT recommends that the State party conduct regular training to ensure that law enforcement personnel can use the IOMS confidently and effectively.

48. While property recording keeping was impressive in some prisons, particularly at Auckland Maximum Security Prison, there were some significant irregularities in registries at police stations (see also paragraphs 74-75 below), The SPT also noted inconsistencies in practices concerning medical record keeping and was concerned at the lack of clarity concerning the rules relating to confidentiality. Moreover, the SPT observed in several police stations that the risk assessment form (Health and Safety Management Plan for Person in Custody) was incomplete, which is of particular concern given the large number of persons with mental health issues in detention.

49. The SPT recommends that the State party ensures that the quality of its record keeping is improved, particularly in police stations. It also recommends that immediate measures be taken to ensure the confidentiality of medical information and that Health and Safety Management Plan for Person in Custody are properly completed and filed

D. Māori Issues

50. The SPT observed that there is a disproportionately high number of Māori at every stage of the criminal justice system. While commending the establishment of Māori Focus Units in Hastings and Rimutaka prisons, among others, and the strides made by the State party to address both Māori and general recidivism through reintegration programmes, the SPT is concerned at the absence of such programmes in other prisons, particularly women's prisons.

51. The SPT notes that Māori recidivism, particularly youth recidivism, is attributable to a broad range of factors requiring targeted responses which go well beyond those provided by the criminal justice system.

52. The SPT recommends that the State party replicate and further develop existing programmes, including Māori literacy programmes, aimed at reducing Māori recidivism. The State party should focus on programmes which support reformation and reintegration, produce tangible outcomes and focus on preventing reoffending.

E. Juvenile justice

53. The SPT welcomes the extent to which the arrest, detention or imprisonment of a child is used only as a measure of last resort and for the shortest appropriate period of time, in accordance with international standards. Having observed the work of Police and staff at the Youth Justice Residences visited, the SPT commends the extent to which it reflects the principle of the best interest of the child, the promotion of the sense of dignity and worth of the child, and the reintegration and constructive functioning of the child in society.

However, the SPT was concerned at the low legal age for criminal responsibility, starting at 10 years old under the Children, Young Persons, and Their Families Act.

54. The SPT recommends that the State party consider increasing the age of criminal responsibility.

55. The SPT considered the Youth Justice Residences it visited to be very structured and organised. It commends the high ratio of staff to children and adolescents, which enabled impressive dedicated care. The SPT observed cases of mixing remand and sentenced children and adolescents, and at times, the mixing of males and females, which was purposefully done to allow all to benefit from the behaviour modification programmes and activities in place.

56. The SPT noted the efforts made in prisons to replicate the approach of the Youth Justice Residences, e.g., as regards facilities and behaviour modification programmes for juvenile prisoners. However, a more flexible approach could be used to improve the regime of juveniles remanded in custody, in particular with regard to activities aimed at reintegration.

57. The SPT recommends that, as in Youth Justice Residences, exceptions to the requirement for separation between remand and convicted juveniles could be made in prisons, in order to allow juveniles on remand, if they so wish, to participate in organised activities, including work programmes which would otherwise be unavailable to them.[12]

F. Mental health in places of detention

58. All police stations and Corrections facilities visited by the SPT had cells for persons with medical or acute mental health problems or for persons who posed a risk to themselves or to others. The SPT noted the high rates of often chronic and acute mental disorders within the prison population and observed that whilst all facilities visited had medication readily available, detainees had to be referred to the District Health Boards for specialist mental health care. Moreover, the SPT was concerned that there did not appear to be any national strategy on the provision of mental health care in places of detention. The SPT was concerned that not all detainees received timely and adequate treatment and the provision and availability of health care staff, health premises and equipment varied widely across the facilities visited. The SPT heard claims that the Police had difficulty in finding general practitioners willing to work at their stations, as well as had problems of transportation for the external medical staff. The SPT concluded that the current capacity of the system to properly address the mental health of persons in detention does not match the actual needs.

59. The SPT recommends that a comprehensive national policy and strategy be developed to ensure appropriate access to health care and mental health care services across the criminal justice system. A significant increase in provision of mental health services is required to cope with the high number of detainees with mental health problems.

60. The SPT noted that, in general, risk and medical assessments were routinely conducted by officers on the basis of standard risk assessment forms, which were centralized in electronic records. Both Police and Corrections officers expressed concern that they lacked the competence to do so. Likewise, the SPT was concerned that in matters

[12] United Nations Rules for the Protection of Juveniles Deprived of their Liberty, art. 18(b).

regarding health, and mental health in particular, officers were required to make decisions for which they did not feel sufficiently qualified.

61. The SPT recommends that the State party ensures that an accessible, adequate and efficient referral systems be established and all officers are provided with adequate training. The State party should also ensure that steps be taken to promote knowledge of mental health, protection and wellbeing by Police and Corrections personnel.

New Zealand Police

62. The SPT commends the practice of having on-site mental health nurses in police stations, and believes that this initiative has resulted in better monitoring and continuity of care during police custody. The SPT would like to see this practice applied nationally.

63. The SPT recommends that to the extent possible, a full-time, on-site nurse be available to follow-up and monitor the mental health status of persons in custody.

Corrections facilities

64. The threshold for admitting detainees with mental health needs to a local hospital is extremely high, partly because of long waiting lists and delays in admissions for those outside the prison system. As a result, detainees who have made multiple suicide attempts as well as those with acute or chronic mental health conditions were not being transferred to appropriate psychiatric facilities and were being held in "at risk units", often for prolonged periods of time and in conditions akin to that of a disciplinary regime. The SPT believes that the denial of qualified psychiatric assistance under such circumstances and in such conditions may amount to ill-treatment. The SPT was also informed of the increasing numbers of the elderly within the prison population, notes that there is need to increase the number and capacity of age-related health care and treatment facilities, such as hospices and residential dementia care units within the prison estate.

65. The SPT recommends that the State party conduct a country-wide audit of the healthcare needs in institutions, in order to facilitate the provision of adequate health care services and supplies, with a view to ensuring compliance with international standards on health matters.[13] The SPT also recommends that the State party provide, as a matter of urgency, adequate and appropriate access to professional care services in order to meet the mental health needs of detainees.

Youth Justice Residences

66. The SPT commends the provision of on-site health teams at the Residences. However, the SPT noted that at some Residences' staff experienced difficulties in working together with families/whanau. The SPT also heard with concern claims that young people with mental health needs did not receive the care they needed due to a shortage of places in appropriate care facilities.

67. The SPT recommends that adequate support be provided to Residences to enable them to meet the mental health needs of those detained. It recommends that the State party established youth mental health forensic service and ensures that sufficient mental health units are available to meet the needs of for children and young people.

[13] UN Standard Minimum Rules 22.2.

IV. Situation of persons deprived of their liberty

A. Police detention

68. Whilst mindful of its observation regarding the nature of bail in para 21 above, in all police stations visited the SPT was impressed by the focus on granting police bail whenever possible, in order to avoid excessive use of police custody. However, the SPT observed inconsistencies in the physical conditions of police stations and cells visited. While some were newly built, kept clean and were better ventilated, others, especially older police stations, were poorly ventilated, unclean and all facilities visited lacked sunlight. Several police stations appeared to have had windows that had been blocked. Older stations were also cold, particularly on the floors or in the cells used to hold aggressive, intoxicated or at-risk persons. In these police stations, the lack of ventilation also exacerbated the smells and humidity levels in the cells. Moreover, the SPT observed that while some police cells were painted pink, known to have a calming effect on persons in custody, other cells were covered in graffiti, carried out using metal objects and lighters. Although all the cells visited seemed to undergo regular cleaning, the SPT noted with concern that the thoroughness and periodicity varied greatly. These conditions were of particular concern in those police stations gazetted as jails (see also paragraphs 29 and 30). Some of those police stations did not have a dayroom or an exercise yard and, as a consequence, persons remanded in custody would spend several days inside the detention area in the basement of the station, with no access to natural light or the outdoors, and using the corridor as the exercise area when possible.

69. The SPT recommends that appropriate steps be taken to remedy inadequacies in police stations and cells, with priority given to those gazetted as jails, including insufficient ventilation, dampness, and sanitary facilities. Furthermore, consideration should be given to enabling or improving natural lighting, heating and ventilation systems. The SPT also recommends that cells continue to be kept clean and that all graffiti be removed regularly.

70. The SPT noted with concern the lack of privacy in most cells in the majority of police stations visited, whether old or newly constructed. Although all cells had partitions, these were often so slight as to provide no real privacy at all. Sometimes, toilet pans had been added to cells at a later stage, were usually located directly opposite the cell door, and could be seen through the door windows. Toilets located in a corner of the cells still had a peephole in the walls enabling a full view from the corridor. In facilities with closed-circuit television surveillance (CCTV) in the cells, the SPT also noted the lack of privacy as toilets were in full view of the camera. With regard to privacy in the showers, the SPT noted cases where persons using them were fully visible either from the corridor (Wellington Central Police Hub, women showers) or, in one case, by other prisoners from the day room to which the shower was adjacent (Nelson police station). The use of CCTV inside some cells also infringed privacy during the carrying out of body searches and, in one instance observed by the SPT, even though cell blinds had been turned down to perform the search in private, the search was still monitored on the CCTV screens, including by officers of the opposite sex. There was also a lack of privacy in some rooms used by legal counsel to interview detainees and the SPT noted that the noise generated by the use of the phones within interview rooms impeded the privacy of conversations and made it necessary to resort to shouting.

71. The SPT recommends, as a matter of urgency, that national standards be developed for custodial cells. Noting the need to balance the right to privacy with security and safety needs, the SPT recommends that efforts be taken to block the peepholes or add blinds in all non-at-risk cells, in order to better protect the privacy

of individuals when using toilets and showers. In this respect, the SPT recommends that where CCTV cameras are used, they must not cover the toilet area. When carrying out strip searches and monitoring detainees at risk requiring constant monitoring through CCTV, the SPT recommends that monitors are placed out of public view in the custody suite.

72. The SPT also noted a diversity of practice in police stations concerning how detainees were informed of their rights. Written information was generally lacking, except for some posters setting out the rights of persons detained by the police and about the Independent Police Complaints Authority displayed on the walls in the processing area in a minority of the police stations visited. During the course of its interviews, the SPT heard from some detainees that they had not had their rights explained to them at all during the initial stages of their detention.

73. The SPT recommends that notices, in appropriate languages, setting out the fundamental rights of persons arrested and or/detained be placed systematically in police stations in places where they can be easily seen and read.

74. The SPT noticed some irregularities in the manner in which prisoner property records were kept. These included incomplete forms which were neither signed nor dated and which did not properly record the receipt and return of the property concerned. The SPT also found some cases in which records were kept in paper copy only and in files containing a wide range of information, including medical risk assessments, while in other cases such records were in electronic form and attached to the prisoner's profile. In Nelson Police stations, the SPT observed both property for which a record could not be found, and records for property that could not be found. The SPT noted that while some police stations, such as Christchurch Central Police station, appeared to strictly adhere to procedures requiring that all property be placed in individualised sealed, bags, in others, such as Nelson Police station, prisoner property was just kept in regular plastic shopping bags.

75. The SPT recommends that steps be taken to ensure that the proper procedures for storing and record keeping concerning the personal property of detainees in police stations is strictly adhered to.

76. The SPT noted disparities of practice between police stations regarding the provision of food. These ranged from simply keeping a stock of instant noodles and pre-packed, frozen meals to ensuring that food satisfying cultural, religious and dietary needs was provided on a daily basis from a local hospital. In several instances, pre-packed frozen foods were kept in a freezer with no clear indication of manufacture or the expiry date: indeed, there was a suggestion that they were 'frozen leftovers'.

77. The SPT recommends that all police stations serving pre-packed frozen food with the contents, manufacture and expiry date clearly labelled.

B. Court cells

78. The SPT noted that court cells, while placed in the courts and under their jurisdiction, could be operated by the Police or Corrections officers depending on the status of the prisoner appearing in court. The SPT noted discrepancies in the keeping of court cell registries, with some courts having no established cell register at all. As a result, prisoners would be logged in the Police Custody Modules when they left the police station to go the court, but there was no log book for their stay in the court cells. Similarly, there would be no log book for those held in Court cells under the authority of the Department of Corrections (the 'Corrections' prisoners').

79. The SPT recommends that simple registers be kept for court cells, which include times of arrival and departure, as well as other relevant information, including whether prisoners were being released to the custody of the Police, Corrections, or were bailed, etc.

80. As with police detention, the SPT observed that court cell facilities had similar shortcomings as regards privacy and lacked separate cells to segregate different categories of detainees. Blenheim court, for example, had only two cells in addition to the bail room and an interview room in which to accommodate men/women/juveniles/police prisoners/corrections prisoners/possible rival gang members, etc. The cell used for women was equipped with a large internal window which placed the toilet in full view of the officer's room, located immediately opposite the cell. At Porirua Court, prisoners, who were held in underground cells, and their escort, had to use a single narrow, steep, staircase, raising concerns for the safety of both the warders and detainees.

81. The SPT reiterates its recommendations in paras 74-77 above regarding the material conditions of the cells and the need to respect the privacy of detainees.

C. Penitentiary institutions

82. The SPT is concerned that the information provided by the prison management on the daily regime of detainees differed markedly from what most detainees described and what the SPT saw for itself. For example, many detainees are said to be 'out of cell' from 8.00 to 17.00, sometimes with an hour lockdown at midday. This, however, describes the working day of custodial staff and detainees usually still in their cells until 8.30 and locked up well before 4.30, meaning that, in reality, many detainees are in their cells for 18-19 hours per day, and even longer at weekends. The SPT is concerned at the possible harmful effects of being held in so strict a regime for many years, especially those held at the Maximum Security facilities in Auckland. Moreover, the SPT was concerned that the cells themselves were comparatively small (for example, a block of Hastings prison where cells were approximately 2,25 x 2.85 square meters). When combined with the lack of access to an adequate range of activities, such prolonged periods of incarceration in comparatively small cells could potentially constitute ill-treatment.

83. The SPT is further concerned at the lack of adequate exercise facilities and disparities in access to them. As already mentioned, the classification system adversely affected the time that prisoners could exercise and engage in outdoor activities. For instance, in Arohata Women Prison, the lack of facilities, coupled with the need to segregate categories of prisoners, restricted exercise time to about 30 minutes whereas in the Māori Focus Units at both Rimutaka prison and Hawkes Bay, and the Container Unit at Rimutaka prison, prisoners had access to exercise equipment and outdoor activities during the entire unlock period. Furthermore, in most of the prisons visited, the outside yards had roofs, which prevented exposure to sunlight. In numerous instances the so-called 'outdoor exercise' yards were not really 'outdoor' at all. At Mount Eden prison, the SPT observed that prisoners were very pale and were reportedly given vitamin D pills due to the lack of exposure to daylight.

84. The SPT recommends that the authorities to improve the detention regime, in particular regarding out of cell time. The State party should ensure the consistent application of rules on exercise and outdoor activities, and allow adequate time for exercise and outdoor activities for all prisoners. Furthermore, all accommodation

provided for the use of prisoners, including at Mount Eden prison, should meet the requirements of natural light.[14]

85. The SPT noted with concern the low nutritional value of meals provided in the prisons visited. Breakfast and lunch were monotonous, the latter invariably (in the experience of the SPT) comprising three thin white bread sandwiches, and a piece of fruit. The SPT observed that dinner was served around 15.30, leaving detainees without food until at least 8.30 am of the next day. Furthermore, the SPT heard numerous complaints from detainees concerning the list of items that could be purchased, in particular regarding prices, limited choice and unhealthy items which failed to compensate for the paucity and monotony of the food provided.

86. The SPT recommends that the quality, variety, nutritional value and the times of times meals be reviewed, and that the list of items available for purchase improved in terms of quantity, quality and value for money.

87. The SPT also visited several Management Units where prisoners were held for disciplinary offences. The management cells and yards at Mount Eden prison were in a deplorable hygienic state. In addition, the delegation noted with grave concern that the newly built management cells at the Auckland Maximum Security prison (where persons were held in solitary confinement) were extremely small, were under constant video surveillance, afforded little room for internal movement or activity and can best be liked to a tin-can. The so-called 'exercise yard' was a small cage situated immediately across the corridor from the cell and afforded no opportunity for 'exercise' at all. The delegation was informed that 24 more cells of this nature were to be constructed at very considerable expense. At the time of the SPT visit one person was detained in such a cell for what appears to be an unspecified and open-ended period of time, for security reasons. The SPT has grave doubts as to the efficacy of the complaint and appeal mechanisms surrounding the use of these cells. The SPT considers the use of these cells for any prolonged period to amount to ill-treatment and wonders whether their use under any circumstances can be other than inhuman or degrading. It fails to see the need to construct further facilities of this nature.

88. The SPT recommends that

(a) The construction of the proposed new management cells at Auckland Maximum security Prison be suspended;

(b) The practice of holding prisoners in prolonged detention in disciplinary cells on the basis of perceived security risks which they pose cease immediately;

(c) The right of detainees to an effective appeal process, with suspensive effect, against the imposition of disciplinary measures, be ensured as a matter of priority;

(d) Management cells be kept in a clean and decent state of repair and cleanliness.

89. The SPT noted that interview rooms at Auckland Maximum Security Prison did not allow for appropriate communication between prisoners and their lawyers.

[14] SMR, Rules 10 and 11.

90. The SPT recommends that the State party review and remove any practical impediments to the full exercise by the persons deprived of liberty of the right to legal counsel.

D. Institutions for children and adolescents

91. The SPT is concerned that there is a lack of overall capacity in the Youth Justice Residences. At the time of the visit, the residences were below full capacity which allowed them to be used for overnight stays by young persons who would otherwise have had to be accommodated at police stations. This is to be commended. However, this is not always possible and could lead to children being placed in police custody when it would have been in their best interests to remain in the Youth Justice Residence.

92. While fully supporting the policy of only detaining juveniles in custody as a last resort, the SPT recommends that future forecasts of the numbers of places needed to be provided in the Residences takes account of this potential need.

93. The SPT was concerned that there did not appear to be a maximum time limit that juveniles could be held on remand at a Residence.

94. The SPT noted that none of the residences it visited had specific Māori literacy programmes. With regard to additional Māori-focused programmes, the SPT noted appreciatively that one residence was considering assisting young Maoris from distant geographical regions to maintain social and family bonds, whilst another had an initiative to draw on a Māori health provider.

95. The SPT recommends that the State party consider developing specific Māori literacy programmes in Youth Justice Residences, in addition to the mandatory general curriculum.

96. During its interviews the SPT heard complaints concerning the length of time that children and young people were locked up, and also that general lock-ups had been used as a form of collective punishment following an infraction by a single individual.

97. The SPT recommends that the authorities ensure that children and young people are made aware of the disciplinary regulations and that proportionate, tailored measures be applied rather than collective responses.

E. Military institutions

Devonport Naval Base Corrective Cells, Royal New Zealand Navy

98. This facility consisted of three small individual holding cells, one of which was currently used for storage. There were no toilets in the cells, but a duty guard could open the doors to permit access. There was no glass in the small cell windows, which affected the temperature inside the cells. The SPT noted with concern that record keeping, including admissions, was neither systematic nor up to date. The SPT was able to discuss issues of interest to it concerning policies and processes about detention of persons at sea during a phone conversation with senior figures in the New Zealand Royal Navy

99. The SPT recommends that State party ensure that records be properly kept at the premises of the Naval Base and be readily available for inspection by monitoring bodies. Furthermore, in implementation of its mandate as provided in OPCAT articles 4 and 11(1)(a), the SPT requests detailed information, including relevant policies, current practice and statistical data, relating to the detention of persons at sea.

Burnham Camp, Camp cells

100. Although the cells at Burnham Camp were relatively large, there were no toilets, making it necessary for detainee to call and be escorted by a guard.

101. The SPT recommends that deficiencies concerning the sanitary infrastructures in camp cells be remedied, giving due consideration to international standards.[15]

Services Corrective Establishment, Burnham Camp

102. The SPT was impressed by the Services Corrective Establishment, which was new and immaculately kept, as well as the professionalism of the staff in charge of the facility. Clear admission and other notices were readily available for the detainees to peruse. Each inmate had an individual file where the remarks of the officer-in-charge of the disciplinary programme were recorded. All registers and records were properly kept.

F. Centre for accommodation of refugees and asylum seekers

103. The SPT visited the Mangere refugee and asylum centre. While noting that plans are underway to refurbish and rebuild the facility, the SPT is deeply concerned at the current conditions of the buildings, which are very old and lack adequate sanitary facilities. The SPT observed, for instance, that block K, which can hold up to 40 people, only has 3 toilets and 3 showers. The SPT is concerned that these facilities are inadequate and would subject occupants to undignified living conditions were they to be fully occupied.

104. The SPT is further concerned with the record keeping system, which is dire need of improvement. The SPT noted that information about refugees and asylum seekers was not easily ascertainable and that some copies of court warrants and records of social allowances were missing in individual files.

105. The SPT recommends that the State party should expedite the rebuilding of the Mangere refugee and asylum centre with a view to ensuring that living conditions respect the dignity of refugees and asylum seekers.

106. The State party should also, as a matter of urgency, improve record keeping at the Mangere refugee and asylum centre, ensuring that information concerning refugees and asylum seekers is easily accessible and accurate.

G. Border facilities

Wellington airport

107. While noting that, reportedly, detention at the police station in Wellington airport rarely exceeded three hours, the SPT was concerned that the premises did not permit detainees of different genders being held separately, there being only one cell.

Auckland airport

108. The SPT commends the material conditions of the immigration day rooms facilities, where persons awaiting their flights are held for periods of normally less than 3 hours. The SPT also noted of the professionalism of the staff in charge of the facility.

[15] Standard Minimum Rules for the Treatment of Prisoners (SMRTP), rules 12-13.

109. The SPT also noted that persons of foreign origin refused on entry were treated differently depending on the airline that had been arranged for their departure, due to transport and use of escorts being at the discretion of each airline.

H. Transportation of detainees

110. The SPT inspected two types of vehicles used by the Corrections department for transferring prisoners by road: vans with single metal compartments for holding prisoners individually and vehicles with collective benches. Through interviews with detainees and information received from custodial staff, the SPT learned that during transportation in vehicles with single "cages", which were used most often, prisoners were routinely handcuffed and often waist-restrained, regardless of their individual security classification. While accepting that some prisoners may require to be transported in conditions of extreme security to prevent escape, aggression or self-harm, the SPT is of the view that these measures are excessive and should not be customarily applied to all prisoners at all times. Moreover, the SPT considers that transfers in small cages with metal benches and without proper windows for long journeys (up to twelve hours) falls short of a humane system of transportation. The SPT was also concerned that the design of the vehicles prevented both the monitoring of prisoners' conditions by custodial staff, and the effective communication of prisoners with the driver.

111. Regarding transfers of detainees by air, the SPT expresses its utmost concern at the alleged practice of routinely using handcuffs, waist restraints and, in particular, in the suggestion that on some flights all prisoners were attached to a chain down the centre of the plane throughout for the duration of the flight. As with transfers by road, the extreme security measures were allegedly applied to all prisoners, irrespective of their category (remand or convicted) or their security assessment.

112. The SPT recommends that the State party conduct an assessment of the conditions of transportation of prisoners by road and air to ensure that detainees are not subject to the unnecessary physical hardship[16] or restraint, and that decisions regarding the use of restraints are made on the basis of individualised assessments. The State party should also ensure the effective monitoring of transfers of detainee and their transportation.

V. Repercussions of the visit

113. In accordance with OPCAT, article 15, the SPT calls upon the relevant authorities of New Zealand to ensure that there are no reprisals following the SPT visit. The SPT requests the State Party to provide detailed information in its reply on what it has done to prevent the possibility of reprisals against anyone who was visited by, met with or provided information to the SPT during the course of its visit.

[16] Standard Minimum Rules for the Treatment of Prisoners (SMRTP), rule 45.1.

Annex I

List of persons with whom the SPT met

Authorities

Ministry of Justice

Chester Borrows, Associate Minister of Justice/Minister of Courts
Andrew Bridgman, Chief Executive, Ministry of Justice
David Crooke, Senior Advisor, Rights and Regulatory Team, Ministry of Justice
Tracey Davies, Manager, Reducing Crime

Crown Law

Ben Keith, Crown Counsel

Office of Hon Judith Collins

Margaret Malcolm, Senior Advisor

Ministry of Foreign Affairs and Trade

Charlotte Darlow, Acting Director, United Nations, Human Rights and Commonwealth Division
Tania Mead, Policy Officer, United Nations, Human Rights and Commonwealth Division
Holly Warren, Policy Officer, United Nations, Human Rights and Commonwealth Division

Department of Corrections

Ray Smith, Chief Executive
Christine Stevenson, Acting National Commissioner
Vince Arbuckle, General Manager, Governance and Assurance
Jo Field, General Manager, Service Development
Edward May, Senior Adviser, Strategic Policy
Simon Daly, Manager Quality and Performance, Corrections Services

New Zealand Police

Bill Peoples, National Manager Legal
Superintendent Wally Haumaha, General Manager for Maori, Pacific and Ethnic Affairs
Superintendent Barry Taylor, National Operations Manager
Christine Aitchison, Policy Research Advisor, Policy Group

Ministry of Social Development

Bernadine McKenzie, Deputy Chief Executive, Child, Youth and Family
Belinda Himiona, Team Manager, Youth Justice Policy
Grant Bennett, General Manager, Residential and High Need Services

Office of Ethnic Affairs

Joy McDowall, Manager, Strategy and Policy

Te Puni Kokiri (Ministry of Maori Development)

Kim Ngārimu, Deputy Secretary
Harry Tam, Policy Manager

Ministry of Health

Dr. John Crawshaw, Director of Mental Health
Matthew McKillop, Advisor, Officer of the Director of Mental Health

NZ Parole Board Support Services

Alistair Spierling, Manager

Immigration New Zealand

Phillipa Guthrey, Manager, Immigration International

New Zealand Customs Service

Kirsty Marshall, Senior Policy Analyst, Border Protection and Enforcement

Defence Legal Services

Lisa Ferris, Major, Assistant Director

Local Iwi Authority

Neavin Broughton, Port Nicholson Block Settlement Trust

Representatives of the Youth Courts

Anna Wilson-Farrell, Principal Advisor, District Courts
Taryn Meltzer, Advisor, District Courts

Regional Forensic Psychiatric Service

Nigel Fairley, Clinical Director, Central Region Forensic Mental Health Service, Capital and Coast District Health Board

Mental Health Commission

Lynne Lane, Mental Health Commissioner

NPMs

Human Rights Commission

David Rutherford, Chief Commissioner
Claire Achmad, Senior Advisor to the Chief Commissioner
Jessica Ngatai, Policy and Legal Analyst
Kendra Beri, Manager, Strategic Policy

Independent Police Conduct Authority (IPCA)

Judge Sir David Carruthers, Chair
Natalie Pierce, Legal Advisor to the Chair
Nicholas Hartridge, OPCAT Coordinator

Office of the Children's Commissioner

Audrey Barber, General Manager
Dr. Russell Wills, Children's Commissioner
Zoey Caldwell, Senior Advisor

Office of the Judge Advocate General

Bob Bywater-Lutman, Inspector of Service Penal Establishments

Office of the Ombudsman

Greg Price, Chief Inspector (Crimes of Torture Act)
Jacki Jones, Inspector (Crimes of Torture Act)
Bridget Hewson, Assistant Ombudsman
Sarah Murphy, Policy & Professional Practice Group

Civil Society

Tony Ellis, Barrister of the High Courts of New Zealand
Barbara Lambourn, UNICEF (United Nations Children's Fund) New Zealand
Edwina Hughes, Coordinator, Peace Movement Aotearoa
Steve Green, Coordinator, Citizens Commission on Human Rights of New Zealand
Representatives of New Zealand Red Cross
Phil McCarthy, Executive Director, Robson Hanan Trust

Annex II

Places of deprivation of liberty visited

I. New Zealand Police

Papakura Police Station
Hastings Police Station
Otara Community Police Station
Porirua Police Station (accompanying IPCA)
Wellington Central Police Hub (accompanying IPCA)
Wellington airport Police Station
Manukau Police Station
Auckland Central Police Station
Auckland Airport Police Station
Christchurch Police Station
Nelson Police Station
Blenheim Police Station
Paraparaumu Police Station
Matamata Police Station
Morrinsville Police Station
Rotorua Police Station
Taupo Police Station

II. Ministry of Justice

Blenheim District Court cells
Porirua District Court cells (accompanying IPCA)
Wellington District Court cells (accompanying IPCA)
Manukau District Court cells
Nelson District Court cells

III. Department of Corrections

Mt. Eden Remand Prison (Private)
Arohata Women Prison, Wellington
Hastings Prison
Auckland Central Prison
Rimutaka Prison, Wellington (both with Office of the Ombudsman and as SPT delegation)
Paremoremo, Prison of maximum security in Auckland
Paparua Prison in Christchurch

IV. Places of detention under New Zealand Defence Force Facilities

Devonport Naval Base Corrective Cells, Royal New Zealand Navy
Services Corrective Establishment, Burnham Camp

V. Facilities for Children and Adolescents

Te Au rere a te Tonga, Youth Justice Residence in Palmerston North
Korowai Manaaki, Youth Justice Residence in South Auckland
Te Puna Wai ō Tuhinapo, Youth Justice Residence in Christchurch

VI. Facilities under Ministry of Business, Innovation and Employment

Auckland Airport Immigration facilities
Mangere Accommodation Centre for Refugees and Asylum Seekers

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Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to New Zealand from 29 April to 8 May 2013

Addendum

Replies of New Zealand to the recommendations and questions put forward by the Subcommittee on Prevention of Torture in its report on its first periodic visit to New Zealand (CAT/OP/NZL/1)*, **

* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not edited before being sent to the United Nations translation services.

** . On ... 2014, the State party announced its decision to make public its replies to the recommendations and request for information made by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in its report on its first periodic visit to New Zealand. The present document is issued in accordance with article 16, paragraph 2, of the Optional Protocol.

Contents

I. Introduction

1. New Zealand welcomes the report of the Subcommittee on the Prevention of Torture received 5 November 2013. This report responds to the recommendations made by the Subcommittee, and to the extent possible, follows the structure of the Subcommittee's report. For ease of reference, this report includes a brief summary of the recommendations made by the Subcommittee. Please refer to the report of the Subcommittee for the complete recommendations.

II. National Preventive Mechanism

A. Functional autonomy of the National Preventive Mechanisms

2. The Subcommittee recommended the New Zealand Government ensure the National Preventive Mechanisms have complete autonomy when carrying out their functions and are free to determine how they use the resources available to them. The Crimes of Torture Act 1989 protects the functional independence of the National Preventive Mechanisms. They are independent both from the Government and the detaining agencies they monitor. For example section 26(2) of that Act requires the Minister of Justice to have regard to matters set out in Article 18 of the Optional Protocol when designating the National Preventive Mechanisms.

3. Each National Preventive Mechanism also has its own legislation governing matters such as membership, functions and independence. The Human Rights Commission, Children's Commissioner and Independent Police Conduct Authority are independent Crown entities and their independence is protected by the Crown Entities Act 2004 as well as specific legislation for each organisation. The Ombudsmen are Officers of Parliament established under the Ombudsman Act 1975 and are accountable directly to Parliament. The Inspector of Service Penal Establishments is appointed by the Registrar of the Court Martial of New Zealand who is appointed independently under the Court Martial Act 2007.

B. Resources and expertise available to National Preventive Mechanisms

4. The Subcommittee recommended the New Zealand Government ensure the National Preventive Mechanisms have adequate resources to carry out their functions, including access to relevant expertise. The Government acknowledges that the National Preventive Mechanisms face the same funding challenges confronting all government-funded organisations. The Government is committed to adequate funding for the National Preventive Mechanisms and will continue to work with them to ensure New Zealand can continue to meet its obligations under the Optional Protocol.

5. The National Preventive Mechanisms are not funded collectively for their activities under the Optional Protocol. Each is funded separately through the Government's Budget process, as it applies to their type of organisation. The Budget process does not include separate funding for their activities under the Optional Protocol.

6. Baseline funding for each National Preventive Mechanism is determined during the Budget round and it is up to each agency to determine how they prioritise their spending within that baseline. This includes determining the number of staff and what expertise to retain internally. For example, the Independent Police Conduct Authority has indicated it is not necessary to have medical and mental health expertise on staff but it must be able to draw on external advice when required.

7. Chief Executives and Boards are responsible for the discharge of their statutory responsibilities and must have regard to efficient and effective management.

C. Mandate of the National Preventive Mechanisms

8. The Subcommittee recommended that the New Zealand Government organise a meeting with the National Preventive Mechanisms to discuss their challenges, including gaps in their respective mandates. Officials from the Ministry of Justice have met with the National Preventive Mechanisms and will continue to do so as part of their ongoing relationship with government. The National Preventive Mechanisms have identified areas in their respective mandates that could be clarified. For example:

- which National Preventive Mechanism is responsible for dementia units in private establishments, and other private and state-run residential care facilities where persons with disabilities have been placed
- whether joint responsibility of the Ombudsman and the Children's Commissioner for youth justice residence is still required or can be placed solely with the Children's Commissioner, and
- clarification of the mandate for monitoring of court cells (where detainees can be under the control of the Police or the Department of Corrections).

D. National Preventive Mechanisms working together

9. The Subcommittee recommended the New Zealand Government take steps to enhance the status and recognition of the National Preventive Mechanisms, support them to develop a collective identity, and encourage dialogue and better connectivity between the National Preventive Mechanisms and civil society.

10. The National Preventive Mechanisms remain committed to working better collectively and are exploring ways to do so. For example, the Ombudsman and the Office of the Children's Commissioner are currently working together in relation to Mothers and Babies units in prisons.

11. The National Preventive Mechanisms continue to develop consistent practices and ways of working more collaboratively. This has been informed by a review of the first five years of their operation, OPCAT in New Zealand: 2007-2012, which is available on the website of the Human Rights Commission: http://www.hrc.co.nz/human-rights-environment/monitoring-places-of-detention.

12. The review helped to inform a two-day strategic planning workshop, facilitated by members of the Association for the Prevention of Torture. The workshop built on the five-year review findings to identify weaknesses and challenges, define collective priorities and began developing an Action Plan for the coming year. The Action Plan covers outreach activities, securing resources, building the collective evidence base, leadership and coordination, and general operations (for example access to expertise, multidisciplinary teams, and cultural diversity).

13. The National Preventive Mechanisms meet several times a year to share information and discuss key issues. A representative of the Ministry of Justice attends meetings as an observer to ensure the National Preventive Mechanisms and the Government remain in constant contact.

14. As part of their strategic planning, the National Preventive Mechanisms will consider whether, and if so how, to develop a communications plan and use this as the basis for updating existing information and raising awareness about their activities.

III. Overarching Issues

A. Legal Framework

15. The Subcommittee recommended the New Zealand Government consider withdrawing its reservations to Article 14 of the Convention Against Torture, which relates to compensation for torture, and Article 37(c) of the Convention on the Rights of Child (CRC), which relates to age-mixing in places of detention. The Subcommittee also recommended that the Government reconsider the Bail Amendment Bill (reversing the burden of proof for some bail decisions) and the Immigration Amendment Bill (related to mass arrivals).

Compensation for Torture

16. New Zealand maintains a reservation to Article 14 of the Convention Against Torture, making compensation available only at the discretion of the Attorney-General. At the time New Zealand entered the reservation, there was no statutory remedy for torture victims. Since the reservation was entered, however, the Bill of Rights Act 1990 has been enacted. Courts have held that compensation may be awarded for breaches of the Bill of Rights Act.

17. The consent of the Attorney-General is required for prosecutions for alleged acts of torture. This reflects the serious nature of the crime and ensures that such a significant charge is properly administered. If there are clear allegations are that an act of torture may have been committed, the Attorney-General would consent to prosecution.

Non Age-Mixing Provisions

18. The Ministry of Health has issued guidelines to assist district health boards (DHBs) and mental health service providers to comply with the non-age-mixing provisions of article 37(c) of the CRC. The guidelines also describe the Ministry's expectations in situations where it is considered in the best interests of a child or young person under 18 years to be placed in an adult ward, including that:

- services should have protocols for referral of young people to adult facilities
- a child and adolescent psychiatrist or senior clinician be involved in determining whether the child's best interests are met post-assessment and work closely with the adult mental health clinicians for the duration of the admission
- the service should ensure access to age appropriate specialist care via child and adolescent mental health services, paediatric services, or other services with expertise in caring for children with disabilities
- a precautionary plan in age-mixing situations must include awareness of the young person's potential physical, emotional and sexual vulnerability
- the young person will have access to appropriate therapeutic and recreational activities and their education needs will be met.

19. Directors of Area Mental Health Services are required to report any instances of age-mixing in mental health units to the Ministry of Health. Notifications must include a justification for age-mixing that confirms it is in the best interests of the child. A common

reason for admitting a young person to an adult unit is when it is not possible to immediately admit them to a youth mental health facility, and it was considered in the best interests of the young person to be assessed in an inpatient setting while the service was arranging transfer to a youth mental health service. This information is collected by the Ministry of Health.

20. In cases where it is unclear whether age-mixing has been in the best interests of the child or young person, the Director of Mental Health may intervene. District inspectors of mental health also advise the Ministry of Health when they become aware of possible breaches of a child or young person's rights under the Mental Health (Compulsory Assessment and Treatment) Act 1992 or article 37(3) of CRC. District inspectors are independent lawyers appointed under the Mental Health (Compulsory Assessment and Treatment) Act to uphold the rights of patients under the Act.

Bail Amendment Act 2013

21. The Bail Amendment Bill (now enacted) reversed the burden of proof for some groups of defendants who have been shown to have the highest rates of offending on bail. The Bill also removed the presumption in the Bail Act for bail for defendants aged 18 and 19. The presumption was retained for defendants aged 17 and under, except where they have previously been sentenced to a term of imprisonment. The decision to grant bail in an individual case, however, remains with the court and is subject to section 24(b) of the New Zealand Bill of Rights Act 1990. The amendments contained in the Bail Amendment Act, which related to other groups of defendants in addition to youth, improve public safety and ensure the overall integrity of the bail system.

Immigration Amendment Act 2013

22. The Immigration Amendment Act 2013 defines a mass arrival as an arrival of 30 or more people coming on one craft, or in a group of craft, or separately but within a time period or circumstances that shows intention to be part of the same group.

23. The Act contains safeguards that ensure that detention is not mandatory or arbitrary. The Judge must be satisfied that the warrant is necessary before issuing the warrant of commitment, has discretion to issue a warrant for a shorter period of detention than six months, and can require an immigration officer to report to the court at specified periods on whether the warrant is still necessary. Detention will enable the relevant agencies to enquire as necessary into the backgrounds of the asylum seekers pending decisions on refugee or protection claims. This will help confirm identity, and assess whether the asylum seekers pose a risk to national security or public safety. Once the identities and circumstances within the group are understood their immigration status can be regularised as appropriate, and detention would no longer be necessary.

B. Institutional framework

Security classification system

24. The Subcommittee recommended the New Zealand Government review the system for categorisation of prisoners and the conditions of remand prisoners and youth. A key priority for the Department of Corrections is to ensure that all prisoners have access to rehabilitation, education, employment and exercise. The security classification system is important for achieving these objectives and Corrections is reviewing it to ensure youth and remand prisoners have increased access to programmes.

25. Corrections' security classification system was designed to ensure that sentenced prisoners are managed appropriately for their risk profile. It takes account of a range of

factors, including previous escape attempts and incidents involving violence, in order to minimise risk. Corrections recognise that classification systems need to be regularly reviewed in order to ensure that no unnecessary limitations are being placed on prisoners' access to rehabilitation programmes, education and employment opportunities. In 2013, adjustments were made to give under 25 year-old prisoners more opportunities to work outside prisons, without compromising public safety. Corrections is now reviewing the whole security classification system so that front line staff are better able to tailor management approaches to the needs and risks presented by individual prisoners. The review will also ensure that decisions regarding classification are transparent to prisoners.

26. Corrections are also piloting a remand management tool, which is intended to provide a more detailed assessment of individual remandees' risk profile. It is expected that this will lead to more remand prisoners being treated as low security, enabling them greater access to education, training and rehabilitation. The tool will be rolled out nationally later this year. In the meantime, programmes designed specifically for remand prisoners have been introduced and expanded. These include alcohol and other drug treatment, education assessments, language, literacy and numeracy programmes and short motivational programmes.

Parole

27. The Subcommittee recommended eliminating all barriers to parole. All prisoners who are sentenced to two or more years of imprisonment are entitled to a parole hearing at their parole eligibility date and, if parole is denied, within 12 months of their last hearing. Access to the parole board is not dependent on prisoners having completed rehabilitation programmes or any other activity. Corrections recognise, however, that the parole board considers how much progress prisoners have made in their rehabilitation when it is making decisions about release. A considerable amount of work is underway to expand the range of programmes available to prisoners as early as possible. For example, Corrections has committed to ensuring that all offenders who need drug and alcohol treatment have access to it.

28. A Parole Amendment Bill has been introduced to Parliament. The proposed legislation is intended to give the parole board the ability to align future hearings with the completion of milestones designed to reduce an offender's risk of re-offending. It will also enable the parole board to bring parole hearings forward where these milestones are achieved earlier than expected. This is expected to strengthen the link between the rehabilitation activities of prisoners and the expectations of the parole board.

Gazetted jails

29. The Subcommittee asked New Zealand to consider alternatives to the use of the police stations as jails until they are renovated prioritise the renovations of police stations gazetted as jails and ensure that there are appropriate means of segregating detainees when new facilities are built or existing facilities renovated.

30. Gazetted police cells are used to ensure prisoners travelling long distances between court and prison are transported humanely. Sometimes the distance between the court and the prison can be considerably lengthy, requiring breaks or overnight stops. Women prisoners in particular use gazetted police cells for breaks or overnight stops as there are only three women prisons in New Zealand. Gazetted police cells are also used when there are not enough places in individual prisons to house prisoners with specific needs or, in the unusual event when Corrections may not have the capacity to house a remand prisoner. As noted by the Subcommittee, all efforts are made to reduce the time spent by prisoners in a police cell to a minimum.

31. Corrections and Ministry of Justice are currently working on a project to introduce Audio Visual Linking (AVL). This will mean that prisoners will not always need to make a physical appearance in the Court room. This initiative may reduce prisoner movements nationally by up to 70% and a corresponding reduction in the use of police jails as holding facilities when detainees are on remand, or who are required to travel significant distances for court appearances.

32. Gazetted jails generally form part of major stations, which are prioritised within the Police property replacement programme. The Police intend to replace four of the custodial facilities visited by the Subcommittee (Hastings, Porirua, Auckland Central and Nelson) within the next four or five years. Decisions to replace or refurbish custodial facilities are made based on the condition of the whole property.

33. In addition to the properties mentioned above, Police expect to replace or refurbish Hamilton, Napier, Whanganui, and Whakatāne stations when funding is available. Police will assess the gazetted jail portfolio and examine any facilities unlikely to be renovated in the next few years. Consideration will be given as to the best way to address any identified shortcomings. It is anticipated that capital expenditure over the past ten years combined with the above proposed expenditure, will result in the majority of stations gazetted as jails having upgraded detention facilities. New refurbishment plans take into account the need to segregate detainees.

Pre-trial detention

34. The Subcommittee recommended New Zealand ensures pre-trial detention is used as the last resort and pre-trial detention is not excessively prolonged. The starting point of New Zealand law is that the defendant should be released on reasonable conditions unless there is just cause to remand him or her in custody. The factors that the court must consider in deciding whether there is just cause to detain the defendant are set out in section 8 of the Bail Act 2000 and mirror the issues identified by the Subcommittee. There have been significant changes to criminal procedure in recent years as a result of the Criminal Procedure Act 2011 which have simplified and streamlined court processes to reduce the time needed for a case to be completed. These changes will help ensure that pre-trial detention is not excessively prolonged.

Imprisonment rate

35. The Subcommittee recommended that New Zealand investigate the reasons for the high incarceration rates; explore the possibility of expanding the use of non-custodial measures, and place greater emphasis on reintegration programmes.

36. New Zealand's imprisonment rate has been the focus of multiple government projects over the last ten years. The imprisonment rate by population in New Zealand is linked to relatively high crime resolution rates and prosecutions. The imprisonment rate in proportion of convicted offenders imprisoned (approximately 8%) is not unusual by international standards. New Zealand also has one of the highest rates of non-custodial sentencing of any country in the developed world.

37. An important outcome of the projects was the introduction of several new community sentences, which were made available to judges as sentencing options in October 2007. Combined with recent changes to policing practice through Policing Excellence, the expansion of offender rehabilitation services and an increase in re-integrative services in the community, there has been a significant decline in the number of people being imprisoned. However, this reduction has been less pronounced for serious offending which has a more significant effect on the prison population.

38. There is limited potential for further reductions in the prison population by the introduction of additional non-custodial measures as these tend to be used for less serious offending, for which there is already a wide range of sentencing options. Measures to address over-representation of Māori in the criminal justice system are discussed at paragraphs 0 to **Error! Reference source not found.** of this response.

Staff and prisoner safety

39. The Subcommittee expressed concern about safety of prison staff and prisoners. The safety of staff and prisoners is of paramount importance. Corrections have programmes and initiatives in place to create a safe environment for everyone.

40. Corrections have dedicated considerable resources over the past 18 months to investigating and addressing prison violence. Departmental research has shown that the total number of serious prisoner-on-staff assaults is relatively stable, averaging around 7 per annum for the last decade. Although rates of staff assaults are comparatively low by international standards, Corrections promotes a culture in which violent or anti-social behaviour is challenged and changed. To this end, Corrections last year set up an expert advisory panel on staff safety to inform the development of a Staff Safety Plan. Members include experts from the public and private sectors. The advisory group consulted with a diverse range of interested parties, including many justice-related non-government organisations and the Office of the Ombudsman. The resulting three year staff safety plan – Keeping Each Other Safe – contains concrete actions to take place in year one, including:

(a) setting up staff safety forums to ensure staff is listened to by managers when they raise safety concerns;

(b) incorporating new course content on staff safety into the initial training for Corrections officers, which has recently been extended from 6 to 9 weeks;

(c) improving the reporting of 'near miss' incidents so that there is a clear focus on stopping violence before it escalates.

41. Under the strategy, Corrections has also developed a set of resources promoting a culture change in the way prisoners and staff relate to one another. These focus on: staff and prisoners treating each other with respect, staff communicating clearly with prisoners, prisoners communicating when something is not right, and violence by those at prison is unacceptable. Posters outlining these expectations are displayed in all prisons, with additional information provided through booklets and DVDs.

42. Several other initiatives are also expected to have a positive impact on prison culture. These are:

(a) Right Track, a more active management approach to daily interactions with offenders, which is about supporting them to make progress against their offender plans and make positive life choices;

(b) Tactical communication, a set of principles and tactics that will enable Corrections Officers to use 'presence and words' to generate compliance and de-escalate difficult prisoners. The skills taught through tactical communications are designed to redirect the behaviour of hostile prisoners and diffuse potentially dangerous situations. All Corrections Officers are trained in the use of tactical communications and take competency-based assessments every two years:

(c) Improvements to the selection process used to recruit Corrections Officers.

43. As a result of the initiatives described above, by 2016 Corrections aims to achieve an overall reduction of 50 percent in the rate of serious prisoner assaults on staff, and a

year-on-year reduction in the rate of serious prisoner assaults on other prisoners. Inter-prisoner violence prevention is discussed at paragraphs 0 to 0 of this response.

Prisoner sanctions

44. The Subcommittee noted that only those responsible for incidents in prisons should be penalised as a result. Prisoners are only sanctioned if they are found to have committed an offence against discipline. When a potentially dangerous situation is unfolding with an individual or group of prisoners, it can be necessary to lockdown entire units. This is only done when warranted by the need to ensure the safety of staff and other prisoners and every effort is made to restore the units to being fully operational as soon as possible.

Prison violence

45. The Subcommittee recommended that New Zealand intensify efforts to tackle inter-prisoner violence. Research undertaken by Corrections as part of its violence reduction work (as discussed previously) has found violence in prisons is caused by a wide range of factors. Corrections is making significant investments in preparing prisoners for a successful return to the community to meet its goal of reducing re-offending by 25% by 2017. As a result, by the end of June 2014 all prisoners at three of our prison sites will be engaged in education and training for 40 hours each week – an initiative we are extending across our network of prisons.

46. Corrections have also increased the number of places available on its medium intensity suite of rehabilitation programmes. These programmes are designed to teach offenders how to alter the thoughts, attitudes and behaviour that led to their offending, and help them maintain positive changes. These increased opportunities, coupled with more comprehensive initial training for staff described earlier, will contribute to a constructive prison culture and help tackle inter-prisoner violence.

47. Corrections are working to address prisoners' substance abuse issues. Over the past year, Corrections implemented a prison-wide alcohol and drug strategy, which has increased the availability of group-based motivational programmes for prisoners in need of them. The programme helps prisoners to identify the issues of drug use, enhance motivation to change, and discuss options to change. Eligible prisoners can also enter a drug treatment unit, which provides a three or six month group-based programme in a therapeutic environment.

48. Corrections acknowledge that gang membership is a challenge for New Zealand's prisons, as it is one of the strongest predictors of ongoing violence and criminal activity amongst prison populations. Corrections are currently developing an action plan to reduce re-offending by gang members. Key themes include increasing gang members' participation in interventions and supporting offenders and their whānau/family to exit gangs. It also focuses on better identifying gang members in prison and on community-based sentences, and better protecting prisoners without gang connections from intimidation and recruitment, particularly young and first-time prisoners who are especially vulnerable.

49. Corrections are also closely involved in the development of a national gang strategy, which is a being led by the New Zealand Police.

C. Fundamental Safeguards

Right of accused or detained persons

50. The Subcommittee made recommendations about ensuring people arrested or detained by Police are aware of their rights. Existing legislation, case law and standing

Police Instructions provide that any person who is detained (or who is being spoken to in such a way that leads them to believe that they are detained) must be advised of their rights. Police carry notebook cards with the Rights Caution wording. Persons taken into Police custodial areas are reminded of these rights. Police will consider other methods to remind detainees of their rights during their time in Police custody.

Complaint Mechanisms

51. The Subcommittee recommended New Zealand clearly differentiates requests and complaints by prisoners. Corrections will review the complaints process to differentiate between requests and complaints. This review will ensure records of all requests or complaints, and their outcomes, are available to monitoring bodies.

Staff training

52. The Subcommittee recommended New Zealand conduct regular training to ensure that law enforcement personnel can use the Integrated Offender Management System (IOMS) confidently and effectively. Corrections have recently introduced the Corrections Officer Development Pathway, a training package for new staff that blends on-the-job and classroom-based learning for Corrections officers and offender employment instructors. The Pathway represents a significant change to the way custodial officers are trained. This new approach will support the on-going training and use of the IOMS. In addition, training documents in the form of simple User Guides and online help is provided with every IOMS upgrade or enhancement release.

53. Police have recently developed an on-line training package for the Police National Intelligence Application (NIA) Custody Module and associated Custody Management Console. This training is available to all staff. All new custodial officers undertake the tutorial package as part of their initial induction. Existing custodial staff has been made aware of the package and are encouraged to use it to refresh their knowledge.

Detainee records

54. The Subcommittee recommended New Zealand improve record keeping, particularly in police stations and take measures to ensure the confidentiality of medical information.

55. Detainee records currently exist in paper and electronic form. Paper copies of NIA entries are made to ensure business continuity in the event that the application becomes unavailable. Other documents such as personalised Health and Safety Management Plans for Person in Custody and Record of Medical Examination forms are attached to the printed Custody Sheet while that individual is under Police supervision. This correspondence is securely filed once the person is no longer in Police custody.

56. Health information that has been presented to Police about a detainee since his or her time in custody is available for any officer responsible for the management of the detainee. With shift changes and multiple officer teams this means the health information may be reviewed by several officers over the time the detainee is held by Police. This may be necessary for the health and safety of the detainee. Police monitor access to detainee electronic records using periodic and random auditing processes of the NIA. Any breach of the Acceptable Use of Technology policy initiates an employment investigation.

57. Police are considering the extension of the on-line training package for the Police Custody Module to include information currently held in paper forms. The advantage of electronic systems is that information fields can be mandated.

58. Police acknowledge the importance of keeping full and complete records. In 2014 Police are developing training that covers record keeping that will be initiated for front line and custodial staff.

D. Māori Issues

Māori focussed initiatives

59. The Subcommittee recommended that New Zealand further develop existing programmes, including Māori literacy programmes, aimed at reducing Māori recidivism. Corrections note the Subcommittee's commendation of the Māori Focus Units at Hawke's Bay Regional Prison in Hastings and Rimutaka Prison in Wellington. Corrections has a work programme underway to enhance and expand the Māori Focus Units so prisoners have structured pathways to gain qualifications, rehabilitate and reintegrate into the community. The programme is underpinned by a whānau-centric (wider family) approach aimed at involving positive family in the rehabilitation and reintegration of prisoners. Other Māori focussed initiatives include:

- **Whare Oranga Ake** – 16 bed reintegration units located outside the fence of two prisons. Whare Oranga Ake helps prisoners near release to train for employment, find work, find accommodation on release, and form supportive pro-social networks with iwi, hapū and community organisations. Māori practices, language and values are incorporated into the day-to-day running of the units.
- a **Tikanga Māori programme** which uses Māori philosophy, values, knowledge and practices to motivate prisoners to address their offending needs.
- **Kōwhiritanga** – a group-based rehabilitation programme for female offenders that is designed to help examine the causes of offending and develop skills to prevent re-offending. The programme is designed to be responsive to Māori women.
- **Kaiwhakamana** – Māori elders that provide cultural and spiritual support to offenders.
- **Papamauri at the Auckland Regional Women's Correction Facility** – a cultural space where prisoners participate in cultural and spiritual rehabilitation programmes.
- **Kaitiaki** – local iwi representatives that were actively involved in the development and construction of four prisons (Northland Regional Corrections Facility, Auckland Regional Women's Corrections Facility, Spring Hill Corrections Facility and Otago Corrections Facility). The kaitiaki connect to the prison through the rehabilitation programmes, providing on-going support and cultural guidance.
- **Mauri Tū Pae** – therapeutic programmes tailored specifically to medium to high risk Māori male offenders. The programmes are based on cognitive behavioural therapy integrated with tikanga Māori and are delivered in the five Māori Focus Units and the Northland Regional Corrections Facility. These programmes are designed and delivered by Māori treatment providers

60. Departmental analysis indicates that Māori prisoners perform equally well in mainstream prison-based programmes, including literacy, and they are prioritised for inclusion in all mainstream programmes.

E. Juvenile justice

Age of criminal responsibility

61. The Subcommittee recommended that New Zealand consider increasing the age of criminal responsibility. While the age of criminal responsibility begins at 10 years old, the situations in which children under the age of 14 can be prosecuted are limited. Children aged 10 to 11 years can be prosecuted only for murder or manslaughter. As a result of reforms in 2010, children aged 12 to 13 can now be prosecuted for all serious offences

punishable by at least 14 years imprisonment, or at least 10 years imprisonment for repeat offenders. The reforms were introduced to address situations where children aged 12 to 13 were committing serious repeat offending. The Family Court was considered insufficiently equipped to deal with such cases.

62. In practice, the ability to prosecute children under 14 years old is exercised sparingly. Between 1992 and 2012 there were no prosecutions of 10 to11 year olds. Less than one percent of children and young people charged in court are 12 to 13 years old. The New Zealand Government does not therefore consider that there is a need to increase the age of criminal responsibility at this stage.

Remandees

63. The Subcommittee also noted that exceptions to the requirement to separate remand and convicted juveniles could be made in prisons, to allow those on remand to participate in organised activities. The separation of remandees from convicted prisoners is a long-standing feature of New Zealand's justice system and is incorporated in the Corrections Act 2004. Corrections accepts the importance of providing education, employment and training opportunities for young remandees, as succeeding with this group presents the best opportunity to prevent a lifetime of recidivism and other negative outcomes. As discussed at paragraph 0, Corrections is in the process of amending its remand classification system so that a wider range of activities are available to all remand prisoners, including young remandees.

F. Mental health in places of detention

64. The Subcommittee has made several recommendations in respect of the mental health of persons in places of detention. In summary:

(a) develop a comprehensive national policy for access to health care and mental health care services across the criminal justice system;

(b) ensure an adequate referral systems is established;

(c) ensure all officers are provided with adequate training;

(d) to the extent possible, make sure a full-time, on-site nurse be available to follow-up and monitor the mental health status of persons in custody;

(e) audit the healthcare needs in institutions and ensure adequate access to mental health care services, and

(f) provides adequate support residences to enable them to meet the mental health needs of those detained, including a youth mental health forensic service.

Overview

65. Mental health services are contacted to assess any person in police custody when police have reason to believe this is necessary for the person's well being. Police establish necessity through: information gathered from others, such as family members, police observation and the formal risk assessment tool. Mental health services do not generally attend police custody centres unless there is an identified risk.

66. In October 2013, Police established a mental health intervention team to improve collaboration between police and mental health services. The project aims to improve all detainees' access to mental health services. Nurses in four police custody centres are a good example of steps taken to provide detainees with routine access to mental health services.

67. New Zealand has a well-established system for the mental health care of people in prisons, which is based on the fundamental principle that mentally ill prisoners have the same right of access to mental health services as other people with mental illness in the community.

68. Where a prisoner has moderate to severe mental health problems that require assessment and treatment in a hospital setting, they can be transferred to one of five forensic mental health services across New Zealand.

69. The Ministry of Health is developing a national forensic mental health framework to guide the future development of forensic services. The framework will also focus on ways in which general adult mental health services can increase efficiency in forensic mental health services, by better managing individuals prior to and following treatment.

70. The Ministry of Health and Corrections are working closely to address service pressures. The Ministry of Health has commissioned an additional five beds at Capital and Coast DHB to relieve immediate pressures on the forensic services in Waitemata DHB. The Ministry is also working with the Northern Regional Authority and the Waitemata DHB to further manage pressures on inpatient beds. Waiting lists for forensic mental health services in the Northern region (the region of particular concern) have decreased considerably.

71. In June 2012, Corrections implemented the mental health screening tool for all newly received male prisoners. Packages of care for prisoners with mild to moderate mental health needs are now in place at all prisons.

72. Corrections have commenced a trial of a Mental Health In-Reach Clinician role at three prisons. Clinicians provide education and support to custodial and health staff to support improved identification and management of prisoners with mental health needs. They also support the effective transition for prisoners returning from inpatient mental health facilities and from extended periods in the At-Risk Unit. They will also support referral to community based primary mental health providers for prisoners on release.

73. Corrections are also in the process of reviewing how at-risk prisoners (prisoners at risk of self-harm or suicide) are managed with a view to providing a pathway to wellness. The review will be completed by June 2014.

Staff training in mental health recognition

74. Corrections Officers are fully supported in the day-to-day role of managing detainees by Corrections health staff. Training for Corrections Officers in mental health recognition, response and referral is being further developed following a successful pilot in 2013. The training is based on a Ministry of Health sponsored programme that was piloted by Corrections and Police jointly. Further work is underway to improve training for probation and Corrections staff on suicide awareness, with training to be rolled out in 2014.

75. In 2013, Police established a mental health intervention team to improve the overall Police response to people with mental illness. A significant work stream for the project is to provide mental health training to all frontline staff, including staff working in custody centres, with training to start by July 2014. Training will cover technical aspects of law, policy and recording standards. Attendees will learn to recognise basic signs and symptoms of mental illness, and respond appropriately, including access to support services.

76. The mental health intervention team project is developing a referral system for people with mental illness who come into contact with Police. This will include promoting the need for referral and providing contacts at a local level.

Mental health nurse support

77. The Ministry of Health has a close working relationship with the New Zealand Police, which is mirrored at DHB and Police district level. The Ministry requires DHBs to look at ways in which they can effectively support Police in managing people with mental health problems, in ways that reflect local needs and resources. All DHBs provide advice and assistance to their local Police, and some DHBs provide nurses in Police watchhouses on a full-time or part-time basis, depending on need.

78. Four police custody centres have mental health nurse support. Evaluation of the nurses in custody centres initiative has been positive. Police are looking to expand this initiative.

Corrections facilities

79. Corrections are working closely with the Ministry of Health and Regional Forensic Mental Health Services to improve access for prisoners to mental health facilities. Waiting lists for beds have improved significantly over the last five years. Corrections health centres are accredited by the New Zealand College of General Practitioners under its Cornerstone accreditation programme. This process involves external assessors spending time in prison health centres reviewing every aspect of service delivery.

80. As part of the redevelopment of Auckland Prison, Corrections has worked with forensic experts to develop a new operating model for mental health care in prisons that will mitigate the need to transfer prisoners to inpatient care. The new model will be in place in 2017.

81. Corrections opened the High Dependency Unit at Rimutaka Prison in December 2012. The unit is designed to support prisoners who require additional support in prison due to their physical or cognitive functioning, including aging prisoners. The 20-bed unit will be expanded to 30 beds by mid-2014. In addition, work is underway to develop a plan for supporting aged prisoners along the continuum of health needs. The plan will be completed in 2014.

82. The mental health intervention team project will improve collaboration between Police and mental health services. The goal is to increase access to mental health services for all detainees.

83. The Ministry of Health is working with Corrections and Waitemata DHB to develop new models of care within prisons. This work will increase the options for earlier and alternative management of prisoners with mental health needs to reduce the requirement for admission to hospital and potentially enable an earlier discharge to prison. This also involves working with Corrections to facilitate forensic mental health services' access to prisons.

Youth forensic mental health services

84. Youth forensic mental health services are provided regionally by DHBs, as are adult forensic mental health services. The regional services are based in Auckland, Hamilton, Wellington, Christchurch and Dunedin.

85. The Ministry of Health is working with DHBs to implement a range of new youth forensic mental health services in youth courts, youth justice residences and the community. These services will include multi-disciplinary mental health teams in all four youth justice residences providing assessment, treatment and support for transition back to the community in conjunction with primary care, education and youth justice practitioners working in the residences. An additional 25 fulltime equivalent (FTE) clinicians were recruited in 2012/13, and a further 15 FTEs will be recruited by June 2015 to fully

implement these new services. This will take the specialist youth forensic workforce to 75 FTEs.

86. Plans are also underway for a new 10 bed secure youth forensic in-patient unit to be opened by the end of 2015.

IV. Situation of persons deprived of their liberty

A. Police detention

87. The Subcommittee recommended that steps be taken to improve the quality of Police cells, with priority given to those gazetted as jails, and that national standards be developed. The Subcommittee made recommendations to improve the privacy of Police cells, including blocking peepholes in non-at-risk cells and placing monitors out of public view in the custody suite.

88. The Subcommittee also recommended that notices setting out the rights of people detained be placed where they can be easily seen, that procedures for proper record keeping be strictly adhered to and all police stations serving pre-packed frozen food make sure the contents, manufacture and expiry date are clearly labelled.

Upgrading of Police cells

89. Gazetted jails are prioritised within the Police property replacement programme. Issues like ventilation, dampness and sanitary facilities will be fixed during the refurbishment or replacement process. Improving non-gazetted jails will take longer, as Police will need to consider the financial viability of such a project when compared to other priorities. Police will ensure that cleaning of custodial facilities is carried out to a uniform standard across the country and that graffiti is regularly removed.

Privacy

90. Police have been working in conjunction with Corrections and Ministry of Justice under the banner of 'Joining Forces' to review a range of operational activities, systems, processes and facilities. A set of agreed standards for shared custodial facilities is being developed, although Police currently have national standards for custodial cells. All facilities offer a level of privacy which is balanced with the need to provide a level of security for the safety of the prisoner.

91. Police have undertaken a national cell upgrade project. While predominately focused on eliminating self-harm points, lack of privacy in facilities is being considered during upgrading.

92. It is not appropriate to provide blinds that can be controlled by detainees in cells. Custody staff must be able to see into cells. However toilets in cells do have privacy screens and these screens do not have peepholes. Where peepholes into cells exist in older facilities these can be blocked, providing this does not create additional risk.

93. Where cells are covered by CCTV, the toilet privacy screen provides adequate privacy. It is not possible to remove CCTV coverage of these areas, as it would create blindspots and therefore increase risks to staff.

94. CCTV is used to both view and record activities in custodial areas. The monitors are not visible to the general public. Inspection windows and ports are used to view detainees in cells and are a necessary security precaution; allowing staff to conduct checks without causing disruption. Police accept the recommendation to locate CCTV monitors in

the custody suite and out of public view. This will be incorporated into Police's national custodial standard.

Detainee rights

95. Please refer to paragraph 0 of this report for a full description of what Police currently do to ensure detainees are aware of their rights. Police will be considering other methods to remind detainees of their rights during their time in Police custody.

Detainee property

96. Police policy clearly stipulates the requirement and methods to securely store and account for detainee's property. Authorised Property Rules clearly detail the personal items a detainee may bring into a police jail. The rules include the quantity and acceptable content of the literature that may be kept and may be made available.

97. Police undertake to re-emphasise to staff the importance of compliance with the rules including accurate recording concerning the personal property in a training package currently under development.

Detainee meals

98. Police will discuss this recommendation with the different Districts and look at methods for providing detainees with the original packaging of the pre-packed frozen meal that provides a label listing the contents and the manufacture and expiry or best before date.

B. Court cells

99. The Subcommittee recommended that simple registers be kept for court cells, which include times of arrival and departure, as well as other relevant information. Records relating to prisoner details including detention times and disposition are maintained by Corrections and Police, depending on who is responsible for the prisoner in the relevant court. Police will work with Corrections to check that this procedure is common practice throughout New Zealand.

C. Penitentiary institutions

100. The Subcommittee recommended that New Zealand ensure the consistent application of rules on exercise and outdoor activities, all accommodation (including at Mount Eden prison) meets the requirements of natural light, and that the quality, variety, nutritional value and that meal times be reviewed.

101. The Subcommittee recommended New Zealand suspend the construction of the proposed management cells at Auckland Maximum Security Prison and ensure management cells are kept in a clean and decent state of repair. The Subcommittee also recommended not holding prisoners in disciplinary cells for a prolonged time on the basis of perceived security risks, ensuring an effective appeal process against disciplinary measures, and removing any impediments to the right to legal counsel.

Prisoner exercise

102. The Corrections Act 2004 provides that every prisoner may, on a daily basis, take at least one hour of physical exercise, which may be taken in the open air if the weather permits. Corrections accept that the amount of exercise time that prisoners receive above this minimum entitlement can vary according to a prisoner's risk profile. As discussed

earlier, the security classification review currently underway is expected to result in greater flexibility in the way that prisoners are managed. This will potentially increase out-of-cell opportunities, although the safety of staff and prisoners will remain of paramount importance.

103. The quality of exercise facilities and extent of natural light inevitably varies across New Zealand's prison system, reflecting the age and design of individual prisons. There is a comprehensive programme of capital improvement across the entire prison estate and improvements being made to older facilities.

Prisoner meals

104. All meals are prepared in accordance with food safety standards and meals produced in prisons are assessed on a regular basis. Prison menus were developed with input from a New Zealand Ministry of Health dietician. The menus provide adequate amounts of all food groups and vitamins and minerals, and rotate every four weeks. In instances where prisoners will receive dinner early, extra food is provided to tide them over until morning.

105. In regards to the items for purchase, the list is developed carefully to ensure the items cannot be used to manufacture contraband (such as fermenting fruit into alcohol) that can impact on the good order of the prison. The cost of the items reflects the overhead costs of running the Distribution Centres.

Management unit cells

106. The two management cells that the Subcommittee viewed at Auckland Prison are prototypes. The final design of the management cells will be at least 40%-70% larger and have better natural lighting and ventilation. The units will also have built-in showers and their own exercise yards. The upgraded unit will include areas for programmes including rehabilitation and constructive activities.

107. Corrections have one prisoner detained for a prolonged length of time in a Management Unit cell due to his history of destroying all other types of cells and his high risk of escape. While the prisoner in question is housed in the Management Unit at night, he can associate with other prisoners during the day and receives his full entitlements. Corrections are working with the prisoner to progress him into other units.

108. All prisoners, including those detained in the Management Unit cells, can appeal segregation decisions by applying to the Inspector of Corrections, the Regional Operations Manager, an Ombudsman or a Visiting Justice (an independent official appointed by the New Zealand Governor General). There are processes and timeframes in place to ensure all appeals and complaints are considered in a timely manner.

109. In regards to cleanliness at Mt Eden Prison, managing prisoner movements and maintaining expected cell cleanliness standards is an ongoing challenge given the often transient nature of newly remanded prisoners. A process involving daily cell and yard inspections and a cleaning schedule has been put in place to address this issue.

Communication between prisoners and lawyers

110. All prisoners are provided the opportunity to communicate with their lawyers or have the ability to see a duty visiting lawyer. In regards to the report, the impediments to appropriate communication between prisoners and their lawyers at Auckland Prison are not outlined by the Subcommittee. However, modifications have been made to the visit room which will allow documents to be passed directly from lawyers to prisoners where appropriate.

D. Institutions for children and adolescents

Youth Crime Action Plan

111. In October 2013 the New Zealand Government announced the Youth Crime Action Plan (YCAP) which aims to reduce the escalation of young people into and through the youth justice system. One action within YCAP supporting this is a reduction in the use of custodial remands. In line with YCAP, there are no plans to increase the capacity of our Youth Justice Residences, but instead YCAP has a number of actions, such as increased use of Supported Bail and Electronically Monitored Bail; and the development of an assessment centre approach to focus on an early return to the community of young people on custodial remand, where it is safe to do so. We are also working with NZ Police and the Ministry of Justice on tools to improve the consistency of decision making regarding bail applications. The YCAP will strongly encourage a reduction of the total number, and average length, of young people remanded through the Youth Court to Youth Justice Residences.

The Joint Thematic Review of Young Persons in Police Detention

112. The Joint Thematic Review of Young Persons in Police Detention was conducted by the Independent Police Conduct Authority; the Office of the Children's Commissioner and the Human Rights Commission and is the first joint review to be done as part of the independent monitoring mandate under the Optional Protocol to the Convention Against Torture in New Zealand. This report was released in October 2012, while in November 2012 a joint NZ Police/Child, Youth and Family work plan responding to the Thematic Review recommendations was agreed.

113. The joint Police/Child, Youth and Family Action Plan in response to the Joint Thematic Review aims to reduce the number of young people placed into Police custody for over 24 hours. For those young people who are placed into Police custody, the total duration for each young person will be minimal, the young people will remain in an appropriate environment, and the services delivered to each young person will ensure their safety and wellbeing. The Children, Young Persons, and Their Families Act 1989 require a section 236 Joint Certificate for the continued detention of a young person in Police custody for more than 24 hours and until appearance before the Youth Court.

114. The Joint Thematic Review noted that residential bed capacity was only one of a number of factors that can lead to a young person being detained in a police cell. The joint Police/Child, Youth and Family plan addresses each of the 24 recommendations.

115. The number of young people who were detained in Police custody for more than 24 hours has reduced significantly over the last two years.

Youth justice residences

116. The Subcommittee has asked about Māori literacy programmes in Youth Justice residences. The Youth Justice residential schools adhere to Te reo Māori, which has a special place in the New Zealand Curriculum. Eight curriculum principles underpin curriculum decision making in New Zealand, and one of these principles is headed "Treaty of Waitangi". Te reo Māori is included in learning languages, which is one of the eight learning areas in the curriculum.

117. Ka Hikitia was launched in 2008. It is an education strategy designed to ensure that all Māori students have the opportunity to realise their potential. There are two mainstream schools and one other education provider delivering education services in the four Youth Justice residences. These residential schools are responsible for leading and supporting the changes that will allow Māori students to achieve education success as Māori. Changes are

already underway through integration of Māori language and culture across the curriculum and school, increasing the number of Māori staff, and promoting Māori role models.

118. Within the structured day of the Youth Justice residences, Child, Youth and Family continue to develop Te Ao Māori based programming. These programmes support young people to develop their sense of identity, belonging, cultural connectedness and Māori literacy.

119. A new Māori assessment tool, "Profile for Potential" is being developed in collaboration with one of New Zealand's leader's in Māori mental health. The tool is aimed at identifying potential and developing a plan (Interactive programme) which will allow the potential of each young person to flourish. The process is led by a Māori mentor who will create the Te Ao Māori space and attempt to reconnect our Māori young people with their heritage.

E. Military institutions

Devonport Naval Base Corrective Cells, Royal New Zealand Navy

120. The Subcommittee recommended that New Zealand ensure records are properly kept at the premises of a Naval Base and are readily available for inspection by monitoring bodies. The RNZN has confirmed that all records of detention are maintained by the Fleet Naval Police Officer at HMNZS Philomel and will be readily available for inspection by monitoring bodies.

121. Incidences of detention onboard HMNZ Ships are rare. Records show that four personnel (all members of the New Zealand armed forces) have been detained at sea over the last five years – the maximum length of detention at sea was four days. Arrest and detention of members of the New Zealand armed forces, including those detained at sea, is in accordance with the Armed Forces Discipline Act 1971, the Commanders Handbook on Military Law (DM69 Vol 1), and applicable Orders. Formal training for the Officer of the Day (duty officer) role is undertaken, reinforced, and examined during on the job training in the specific context of each Ship.

122. In relation to foreign captured personnel, the NZDF follows NATO doctrine concerning detention, namely Allied Joint Publication 2.5(A), which contains specific policy guidance on detention at sea. In addition, Standard Operating Procedures are developed for specific operational deployments of RNZN Ships. No individual has been detained at sea in respect of any operational deployment in the last five years.

Burnham Camp, Camp cells

123. The Subcommittee recommended that deficiencies in sanitary infrastructures be remedied, giving due consideration to international standards. A project is underway to provide toilets and basins for the Burnham Cells in order to align with international standards. The project has an expected completion date of 31 May 2015.

F. Centre for accommodation of refugees and asylum seekers

Mangere Refugee Resettlement Centre

124. The Subcommittee recommended New Zealand expedites rebuilding the Mangere refugee centre and improve record keeping at the centre. As part of Budget 2013, the New Zealand Government committed $5.5 million of operating expenditure over the next four years towards the cost of the rebuild of the Mangere Refugee Resettlement Centre (MRRC). A project team to oversee the rebuild has been established. A concept design to

indicate requirements for MRRC has been developed. Expressions of Interest (EOI) from parties wishing to engage in the rebuild were released on the Government Electronic Tenders Service website in March 2014. The Requests for Proposal is expected to be released in May 2014 to short-listed EOI respondents. The rebuild of the MRRC is anticipated to be substantially completed by the end of 2015.

125. The record keeping at the Mangere Refugee Resettlement Centre follows audit record keeping processes, which allows for efficient and consistent retrieval of information when required. All financial records (including general financial administration and financial records pertaining to the payment of allowances to individual asylum seekers) are held in centralised hard copy record keeping folders and electronically in secure folders. Individual hard copy client files are also maintained and contain documentation relating to day-to-day activities individuals undertake, such as leave requests, appointments, warrant of commitments etc. As a result of the Subcommittee's recommendation, copies of individuals' financial records will also be held in their individual hard copy client file.

Transportation of detainees

126. The Subcommittee recommended that New Zealand assess the conditions of transportation of prisoners to ensure they are not subject to the unnecessary physical hardship or restraint, and that decisions regarding the use of restraints are made on the basis of individualised assessments.

127. Corrections are reviewing all aspects of how it transports prisoners, so that it maintains public safety while ensuring that prisoners are transported safely and humanely. This review will build on the existing practices that addressed recommendations from the Ombudsman following his report on the death of Liam Ashley, a young prisoner, in transit in 2007. These practices include the use of waist restraints and single cell compartments. Transporting multiple prisoners together in vehicles poses an increased risk of prisoner-on-prisoner violence, escape (when prisoners are unloaded from vehicles) and assaults on staff, and restraints are considered a necessary safety precaution.

128. The Ministry of Health has published guidelines for forensic services on the transportation of special patients, and has recommended these guidelines to other mental health services.

129. Police policy requires that a risk assessment is undertaken for each prisoner prior to transportation (either by road or air). Factors such as necessity for restraint, type of restraint, type of vehicle and mode of transit are considered. Police do not have a routine practice of using mechanical restraints during conveyance.

APPENDIX 2:

Statement at the conclusion of its visit to New Zealand by the United Nations Working Group on Arbitrary Detention (24 March – 7 April 2014)

Statement at the conclusion of its visit to New Zealand by the United Nations Working Group on Arbitrary Detention (24 March – 7 April 2014)

7 April 2014

The United Nations Working Group on Arbitrary Detention conducted a country visit to New Zealand from 24 March to 7 April 2014, following an invitation from the Government. The delegation was composed of the Chair-Rapporteur of the Working Group, Mr. Mads Andenas, and a member of the Working Group, Mr. Roberto Garretón. They were accompanied by two members of the Working Group's Secretariat at the Office of the United Nations High Commissioner for Human Rights.

At the outset, the Working Group would like to thank the Government of New Zealand for extending an invitation to the Working Group to visit the country and its full cooperation throughout the various stages of the visit.

The Working Group met with various executive and judicial authorities and appreciates the information and assistance that they have provided. Annex I of this statement includes a list of authorities consulted by the Working Group.

During its visit, the Working Group also met with representatives of the New Zealand Human Rights Commission, representatives of the Law Society, members of the Bar Association, practising solicitors, academics, and representatives of civil society organizations.

The Working Group visited places where persons are deprived of their liberty in Auckland, Christchurch, New Plymouth and Wellington. The list of detention facilities that the Working Group visited is provided in Annex II.

The Working Group appreciates that it was allowed to visit all places of detention it had requested and to interview, in private, detainees selected by the Working Group, without any restriction.

General Observations

Overall, legislation and policy concerning deprivation of liberty is well developed and to a high degree consistent with international human rights law and standards. The right not to be arbitrarily arrested or detained is guaranteed in Section 22 of the Bill of Rights Act, although the Working Group notes that the Act does not have supremacy over other parliamentary legislation.

The Working Group observed how police officers inform arrested persons of the grounds for their arrest and their legal rights immediately after their apprehension, in accordance with the Bill of Rights Act. Under the principle that a person must be detained for the shortest possible time, the Police has the authority to release a person on bail until the first court appearance in the case of minor offences. Registration upon entry in police stations, internal movements and departure, and subsequent transfers to other places of detention were recorded electronically in an instantaneous and transparent fashion.

The Working Group has observed in its interviews in private with detainees, that detainees are promptly brought before a judge for the determination of the legality of their detention.

Detainees have the right to initiate habeas corpus proceedings to challenge the lawfulness of their detention and in the case of unlawful detention, the victims have the right to claim and obtain compensation.

The Working Group further observed how the due process rights of accused persons are respected, including the right to be informed promptly of the charges brought against them, the right to a legal counsel, the presumption of innocence, and the right not to be compelled to confess guilty or to testify against themselves.

The total number of individuals detained in prison in New Zealand is 8,700 detainees and the penitentiary system has capacity for 10,100 places. The Working Group observed how prison facilities generally comply with the minimum standards as regards comfort, hygiene and cleanliness, provision of adequate food, access to medical care and availability of recreational activities.

The Working Group has identified a number of instances of best practice on which it will report in its subsequent report. Notwithstanding the many positive achievements, the Working Group would like to draw the Government's attention to the following issues of concern.

Over-incarceration

The Working Group has particular concerns over the wider availability of preventive detention since the enactment of the Sentencing Act 2002, extended supervision orders under the Parole Act 2002, options for intellectually disabled offenders in the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003, and the Public Safety (Public Protection Orders) Bill currently before Parliament.

The Working Group has noted the arguments made in support of the view that the Public Safety (Public Protection Orders) Bill is not in compliance with international law, in the Department of Corrections' Regulatory Impact Statement and in submissions by the Law Society and by the Human Rights Commission. It has also noted the cautious balancing by the Attorney-General in his statement, and the robust parliamentary discussion so far where views differ but all want to keep within international obligations.

The United Nations Human Rights Committee and the Working Group have clarified the requirements under international law which can be restated as follows:

When a criminal sentence includes a punitive period followed by a preventive period, then once the punitive term of imprisonment has been served, to avoid arbitrariness, the preventive detention must be justified by compelling reasons, and regular periodic reviews by an independent body must be assured to determine the continued justification of the detention.

Detention conditions must be distinct from the treatment of convicted prisoners serving a punitive sentence and be aimed at the detainees' rehabilitation and reintegration into society. If a prisoner has fully served the sentence imposed at the time of conviction, equivalent detention cannot be imposed under the label of civil preventive detention. The substantive grounds for detention must be defined with sufficient precision to avoid overly broad or arbitrary application.

The Working Group finds that the Public Safety (Public Protection Orders) Bill as it stands before Parliament is not in compliance with international law.

Detention of Maori

The over-representation of Maori in the prison population poses a significant challenge as recognised in New Zealand's National Report to the 2014 Universal Periodic Review (UPR) in the Human Rights Council. Maori make up more than 50 per cent of the prison population while Maori comprise some 15 per cent of the population of New Zealand. In the case of Maori women, they account for more than 65 per cent of the prison population.

The Working Group has been able to study the "Drivers of Crime" initiative. The authorities have pointed out that as a result of this initiative, the number of young Maori coming to court decreased between 2008 and 2012 by approximately 30 per cent, but the Government has acknowledged that the rate of young Maori appearing in court is still four times that of non-Maori. Maori account for 54 per cent of all young people appearing in Youth Court and 71 per cent of child offenders appearing in the Family Court.

The Working Group has also been able to study the implementation of the Youth Crime Action Plan, which focuses on reducing apprehensions, prosecutions and recidivism, particularly for Maori. The Working Group has further discussed with authorities of the New Zealand Police the need for and the work on developing a decision-making model to address inconsistencies in the way in which apprehensions of children and young people are resolved, and been able to pursue this in its visits to police stations and places of detention. The Working Group has also studied how traditional and Maori-centred approaches and solutions are sought by Police and the wider criminal justice system in a number of ways.

The Working Group recalls that the United Nations Committee on the Elimination of Racial Discrimination, the Human Rights Committee and, in two reports, the Special Rapporteur on the rights of indigenous peoples, have recommended that New Zealand increase its efforts to prevent the discrimination against Maori in the administration of justice. Particular concerns have been raised in relation to the overrepresentation of Maori women.

Another positive development is the work by the New Zealand Police to improve consistency in decision-making through reducing subjective judgements susceptible to bias. The Working Group is concerned about the extent to which such inconsistencies and bias as pointed out by the Government in its UPR report is systemic, and the degree of such systemic bias.

As to the extent, the Working Group found indications of bias at all levels of the criminal justice process, starting at the investigative stage, through searches and apprehension; police or court bail; extended custody in remand; all aspects of prosecution and the court process, including sentencing; disciplinary decisions while in prison, and the parole process including the sanctions for breach of parole conditions. Bias could typically follow where some aspect of a person's social status or presence of a disability could constitute an aggravating or mitigating factor.

The Working Group considers that special attention should be given to the disproportionate negative impacts on Maori of criminal justice legislation extending sentences or reducing probation or parole.

The Working Group recommends that a review be undertaken of the degree of inconsistencies and systemic bias against Maori at all the different levels of the criminal justice system, including the possible impact of recent legislative reforms. Incarceration that is the outcome of such bias constitutes arbitrary detention in violation of international law.

The Working Group has studied the police review and the 'Turning the Tides' initiative. It recommends that the review would take further the work of the police, extending it to other areas of the criminal justice system. The Working Group also considers that the search needs to continue for creative and integrated solutions to the root causes which lead to disproportionate incarceration rates of the Maori population.

Detention of Refugees, Asylum Seekers and Irregular Migrants

New Zealand was one of the first States to accede to the United Nations Convention relating to the Status of Refugees of 1951. The Government has established an annual quota of 750 refugees. In 2012, it accepted 690 refugees from third countries for resettlement and makes efforts to facilitate their integration in New Zealand.

Outside the annual quota, the Government provides temporary protection. In 2012, 119 of a total of 303 claims for protection or refugee status were approved by the Refugee Status Branch of Immigration.

The Working Group notes that New Zealand does not have a mandatory detention policy for asylum-seekers, refugees or migrants in an irregular situation. The Immigration Amendment Act of 2013 introduced a provision which requires the mandatory detention of asylum-seekers who arrive in New Zealand by boat as part of a "mass group" containing 30 or more persons. These persons may be detained for an initial period of six months on a group warrant, which then is renewable at 28 days intervals.

It is of concern to the Working Group that New Zealand is using the prison system to detain irregular migrants and asylum seekers. They are being held in Waikeria Prison, Arohata Prison for Women and Mt. Eden Corrections Facility. Only the latter facility has a separate unit for persons detained on immigration matters and who have submitted an asylum claim. The other abovementioned prisons, as well as police stations, are not providing separate facilities for migrants in an irregular situation or asylum-seekers.

The Government has announced that it will take 150 refugees from Australia and that it might, subject to enabling legislation, transfer asylum-seekers who arrive by boat to the 'processing centres' of Nauru and Papua New Guinea, where individuals are held in breach of international law. States have obligations not to transfer individuals to camps where they are held in violation of international law.

Detained asylum claimants and undocumented persons who have been refused entry into the country (turnaround cases) have a right to habeas corpus to challenge the need for their detention.

The Working Group visited the Mangere Refugee Resettlement Centre, which has a capacity to lodge 150 persons in an open system. At the time of the Working Group's visit, there were 130 persons having lodged claims for protection or refugee status or having already obtained refugee status according to the UNHCR quota. The regime for people having requested

protection status is harder than the regime applied for persons having already obtained refugee status. Both categories of people may leave the centre, but those having requested protection status must request authorization.

The Working Group emphasises that detention of migrants in an irregular situation, asylum-seekers and refugees should normally be avoided and be a measure of last resort. Alternatives to detention should always be given preference. International evidence suggests that humane and cost effective mechanisms such as community release programmes can be very successful.

The Working Group is also concerned about cases reported to it in which asylum seekers and irregular migrants were not provided with legal representation and interpretation, and detained in police stations or remand prisons.

The Working Group also adds its voice to the 2010 recommendation of the Human Rights Committee, and urges the government to extend the mandate of the New Zealand Human Rights Commission so that it can receive complaints of human rights violations related to immigration laws, policies and practices and report on them.

Detention of Persons with Mental or Intellectual Disabilities

New Zealand has a robust legislative framework governing the detention of persons with mental disabilities under the Mental Health (Compulsory Assessment and Treatment) Act 1992. The Act clearly sets out the processes whereby a person may be made subject to a compulsory treatment order, the rights of persons who are undergoing compulsory assessment or subject to a compulsory treatment order, and the processes whereby they may seek review of their detention through District Inspectors and by the Mental Health Review Tribunal.

However, it is of concern to the Working Group that the legislative framework is not effectively implemented to ensure that arbitrary deprivation of liberty does not occur. In practice, compulsory treatment orders are largely clinical decisions, and it is difficult to effectively challenge such orders. Although the Mental Health Act guarantees the right to legal advice for all patients, persons undergoing compulsory assessments are often unrepresented in practice, as they do not have access to legal aid. The Family Court, which makes compulsory treatment orders, is not a specialist court in mental health and seems to have the tendency to heavily rely on medical reports by merely one clinician and one another medical professional, who, in most cases, is a registered nurse. The Working Group further expresses its concern relating to the widespread practice of seclusion in psychiatric units. While recognizing the Government's achievement in reducing the incidents of seclusion since 2009, the Working Group urges the authorities to eliminate this practice.

Persons who were found unfit to stand trial may be detained in forensic facilities for a long period of time due to their disabilities. One concern relates to determination of fitness to stand trial where accused persons are found to be mentally impaired. In such cases, it is determined on the balance of probabilities, which is lower than the standard of proof required in the criminal justice system. Another concern is that they may remain in detention in forensic facilities after having served the maximum term of sentence. In some cases, such persons are detained for over and beyond the maximum term of sentence.

The Working Group also heard consistent testimonies that people with intellectual or learning disabilities are at particular disadvantage in the criminal justice system. In some cases, they may be questioned by the police without the presence of a legal counsel. They are subsequently convicted and sentenced without effective legal representation, as they may either have limited access to legal aid or their legal aid lawyers may not have a comprehensive understanding of their disabilities. The Working Group would like to stress that, pursuant to article 13 of the Convention on the Rights of Persons with Disabilities, persons with disabilities must be afforded access to justice on an equal basis with others. In practice, this would translate into the need to ensure that persons with disabilities have access to legal representation and to ensure that those who may come into contact with persons with disabilities such as police officers must be adequately trained to give due consideration to their complaints on an equal basis.

Another area in which protection gaps seem to exist is the detention in rest homes or even in secure facilities of older persons suffering from dementia. The Working Group notes that despite the increasing phenomenon of older persons staying in residential care, there is very little protection available to ensure that they are not arbitrarily deprived of their liberty against their will. The Working Group calls on the authorities to develop a comprehensive, human rights-based legal framework governing the provision of services to older persons suffering from dementia or other disabilities in residential care.

The Working Group also recommends that the National Preventive Mechanisms (in the New Zealand Human Rights Commission under the Optional Protocol to the Convention against Torture) are appropriately resourced to monitor all places of deprivation of liberty, including rest homes and secure facilities.

Detention of Children and Young Persons

A notable gap remains in relation to the legislative protection available to children aged 17 years. They are considered as adults for penal responsibility effects, tried as adults and, if condemned, are sent to adult prisons. Despite recommendations by the United Nations Committee on the Rights of the Child and the United Nations Committee Against Torture to extend the protection measures under the Children, Young Persons and Their Families Act 1989 (CYPF Act) to include 17-year-olds, this has not occurred. The Working Group also heard evidence on detention of young persons in police cells, and will report more fully on this.
The Working Group was informed that New Zealand is currently reviewing its practices relating to the separation of young people deprived of their liberty from adults, as part of an on-going review of its reservation to Article 37(c) of the Convention on the Rights of the Child.

There are certain remaining issues but the Working Group would urge New Zealand to fully comply with the requirements of the Convention on the Rights of the Child and to withdraw its reservations.

Remedies for Victims of Arbitrary Detention

The Working Group has reviewed New Zealand's law on remedies, and the Prisoners' and Victims' Claims Act 2005 with subsequent amending legislation. The 2005 Act restricts awards of compensation sought by specified human rights or torts claims made by a person

under the State's control or supervision. It also provides a simplified process for the making and determination of claims that a prisoner as a victim may make against compensation required to be paid in respect of specified human rights or tort claims made by the prisoner. When the 2005 Act was adopted, the Select Committee emphasised that the Act fully complied with international obligations and the Bill of Rights. Legal advice provided by the Crown Law Office confirmed that the bill as drafted was not in breach of either. However, the Attorney-General in his 2011 report on later amending legislation, concluded that the 2005 Act was inconsistent with the right to an effective remedy for breach of the Bill of Rights and also inconsistent with New Zealand's international obligations, citing the concerns by the Committee against Torture and the Human Rights Committee.

In *Christopher Hapimana Ben Mark Taunoa and Ors v The Attorney General and Anor*, [2007] NZSC 70, the Supreme Court awarded damages for unacceptable prison conditions in breach of the Bill of Rights and international law obligations. The judgments in this case leave certain questions including on the level of compensation where the Working Group agrees with the judgment of Chief Justice Elias when she authoritatively restates and applies international law in favour of upholding the Court of Appeal.

The Working Group is seriously concerned about the legal advice presented to Parliament about New Zealand's international law obligations. In the Working Group's opinion, the 2005 Act and subsequent amending legislation extending it, is in breach of New Zealand's international law obligations. The right to an effective remedy, as set out not only by the Attorney-General in his 2011 report but also by Chief Justice Elias in *Taunoa*, requires renewed review of the legislation to ensure compliance with the right to an effective remedy and the prohibition of retroactivity.

In conclusion, the Working Group invites the Government of New Zealand to consider the issues that it has raised today. These are the preliminary observations of the Working Group at the end of its visit. A final report on the visit will be presented to the Human Rights Council in 2015. In its report the Working Group will submit its concrete recommendations to the Government.

Thank you very much.

Annex I: List of executive and judicial authorities consulted by the Working Group

- Ministry for Foreign Affairs and Trade
- Minister of Justice and senior officials of the Ministry of Justice
- Chief Justice of the Supreme Court
- Chief Judge of the District Court
- Chief Judge of the High Court
- Deputy Solicitor-General (Constitutional) and senior officers of the Crown Law
- Director of the Public Defence Service
- Members of the Mental Health Review Tribunal
- Public prosecutors
- Ministry of Social Development, Child Youth and Family
- New Zealand Police
- Department of Corrections
- Ministry of Health
- Ministry of Business, Innovation and Employment, Immigration New Zealand

- National Preventive Mechanisms:
    - New Zealand Human Rights Commission
    - Office of the Children's Commissioner
    - Independent Police Conduct Authority
    - Inspector of the Service Penal Establishments
    - Ombudsman

Annex II: List of detention centres visited by the Working Group on Arbitrary Detention

Wellington:

- Central Regional Forensic Mental Health Service

Auckland:

- Mt. Eden Corrections Facility
- Auckland Prison
- Auckland Central Police Station
- Mangere Refugee Resettlement Centre
- Auckland Airport Immigration Facilities
- Middlemore Hospital
- Mason Clinic

New Plymouth:

- New Plymouth Remand Centre
- High Court holding cell
- New Plymouth Police Station
- Taranaki Base Hospital

Christchurch:

- Christchurch Women's Prison
- Rolleston Prison
- Burnham Military Camp
- Te Puna Wai Tuhinapo - Youth Justice Residence

APPENDIX 3:

List of Recommended Actions

The NPMs **recommend that**:

1. The Committee urge the Government to commit to implementing the SPT recommendations over the next reporting period (subject to one clarification set out at section 2 of this submission).

2. The Government commit to reviewing all legislation relating to detainees within the next reporting period to ensure that it fully complies with New Zealand's international obligations.

3. Funding levels should be increased without delay to cover the actual costs of OPCAT work and to enable NPMs to carry out more site visits and to establish a coordinated mechanism to engage the services of experts to assist with those visits.

4. The Government commit to reviewing the scope of the OPCAT mandate in New Zealand with a view to identifying ways to address the gaps in monitoring all places where people are deprived of their liberty. Any increase in scope would need to be properly funded.

5. The Government commit to addressing the overrepresentation on Māori in the criminal justice system by both:

    - drawing on the approach in *Turning the Tides* to develop partnerships with iwi across all areas of the criminal justice system; and

    - stepping up its efforts to address the root causes which lead to disproportionate incarceration rates of Māori.

6. It is recommended that the government continue to extend measures to improve the mental health care and treatment of people in detention, and fund NPMs to retain adequate medical and psychiatric expertise.