

**Annex 2: Submission of the OPCAT National
Preventative Mechanism**

18th SESSION OF THE HUMAN RIGHTS COUNCIL
UNIVERSAL PERIODIC REVIEW

New Zealand's National Preventative Mechanism - 17 June 2013

A. Introduction

1. In 2007 New Zealand ratified the Optional Protocol to the Convention against Torture (OPCAT) and established National Preventive Mechanisms (NPMs) to give it effect.
2. New Zealand has established a multiple body NPM comprising four independent monitoring bodies each responsible for specific places of detention, and a central coordinating NPM. The NPMs are the Ombudsman, the Independent Police Conduct Authority (IPCA), the Children's Commissioner and the Inspector of Service Penal Establishments. The New Zealand Human Rights Commission (**Commission**) has a coordination role as the central NPM with responsibilities for coordination, reports, systemic issues and liaison with the UN.
3. This submission focuses on the rights of persons deprived of their liberty and implementation of OPCAT in New Zealand.

B. Background and Framework

4. 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.

Resourcing

5. An overarching challenge that NPMs have struggled with, is the resources available for OPCAT monitoring. Since ratification of the OPCAT and 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).
6. 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.
7. The Ombudsman's Office is in a slightly different but equally difficult position. Although all of its OPCAT work is funded it is unable, within its existing budget, to monitor all the places of detention that fall within its designation. In addition to the 104 places of detention which the Ombudsman's Office currently monitors, there are a further 161 aged care facilities with dementia units that may fall within the Ombudsman's mandate in respect of health and

disability places of detention. In order to adequately monitor these additional facilities, the Ombudsman would need additional funding.

8. **The NPMs recommend that funding levels should be increased 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.**
9. In early May 2013 the United Nations Subcommittee on Prevention of Torture (SPT) visited New Zealand. During the visit, the SPT met with relevant national authorities and representatives of civil society, and conducted visits to several places of deprivation of liberty. Although the outcome report is confidential the **NPMs would encourage government to commit to releasing the report publicly and to setting a timetable for implementing the recommendations contained therein.**

C. Promotion and protection of human rights on the ground: implementation of the international human rights obligations

10. 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 and the UN Committee Against Torture to extend the protection measures under the CYPF Act to include 17-year-olds, this has not occurred.
11. 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, the 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 so that it is reserved for exceptional cases and used only if, and only to the 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. A Bill currently before Parliament will make the Act's scheme permanent.
12. Taken cumulatively these changes seriously 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 to ensure that it fully complies with New Zealand's international obligations.**

Mental Health Issues

13. The high prevalence of mental health issues amongst people in detention, and their access to care and treatment in detention are longstanding issues. In 2012 the Ombudsman completed an investigation into prison healthcare, 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.
14. Overall, a much wider examination of the care and treatment of prisoners with mental illness is required. The Department of Corrections has since established, with the support of the Ministry of Health, a project to improve the mental health care of prisoners. The Ombudsman are monitoring developments.
15. The IPCA carried out a review of deaths in police custody, 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.
16. 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 are professionally treated in a therapeutic environment, rather than managed in a custodial setting.
17. 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.**

Māori Detention rates

18. The over-representation of Māori at all stages of the criminal justice system is an enduring feature of the New Zealand justice system. Despite representing around 12.5 per cent of the general population, Māori consistently make up over half of the male prison population and around 60 per cent of the female prison population. Māori are significantly overrepresented in youth justice statistics (making up 20 per cent of the youth population but 54 per cent of young people appearing in court). The rate of young Māori appearing in court is more than double the rate for all young people.
19. In 2012 the Human Rights Commission published *A Fair Go for All? Addressing Structural Discrimination in Public Services*. This report looked at case-studies of promising responses to structural discrimination. In the justice system, these included the Rangatahi Courts – an initiative that locates part of the youth court process in a Māori cultural setting, and Māori Focus Units in prisons. In addition, a new crime and crash prevention strategy, The Turning

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of the Tide, sets targets for reduced Māori offending, repeat offending and apprehensions. Significantly, the strategy has been produced by Police and Māori working together.

20. Although these initiatives are achieving some results, the over-representation of Māori in all levels of the criminal justice system in New Zealand remains an enduring issue. **It is recommended that strategies be established to identify and address structural discrimination in the justice system.**