Hon Andrew Little
Minister of Justice

Proactive release - Seventh Periodic Report under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: request to release the draft report for public consultation

Date of issue: 19 June 2019

The following documents have been proactively released in accordance with Cabinet Office Circular CO (18) 4.

Some information has been withheld on the basis that it would not, if requested under the Official Information Act 1982 (OIA), be released. Where that is the case, the relevant section of the OIA has been noted and no public interest has been identified that would outweigh the reasons for withholding it.

No.	Document	Comments
1	**Seventh Periodic Report under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: request to release the draft report for public consultation Cabinet paper** *Cabinet Paper* Minister of Justice	Some information has been withheld in accordance with section 9(2)(g)(i) of the OIA.
2	**Attachment 1: Draft seventh periodic report under the Convention against Torture with appendices** *New Zealand Government United Nations Report* New Zealand Government	Released in full. Also publicly available at: consultations.justice.govt.nz/policy/cat-2019/ *On 13 March 2019 Cabinet Social Wellbeing Committee authorised the Minister to make minor editorial changes that he considers to be appropriate to the Report prior public consultation. The report was subsequently amended to acknowledge the terrorist events that took place in Christchurch and incorporate some minor changes.*
3	**Attachment 2: Committee against Torture's 2017 'List of Issues' prior to reporting** *United Nations Document* CAT Committee 9 June 2018	Released in full. Also publicly available at: consultations.justice.govt.nz/policy/cat-2019/
4	**Attachment 3: Table listing the issues and responsibilities of agencies and Ministers** *Government working document* Ministry of Justice	Released in full.
5	**Seventh Periodic Report under the Convention against Torture [SWC-19-MIN-0015]** *CAB Minute* Committee Secretary *Meeting date: 13 March 2019*	Released in full.

In Confidence

Office of the Minister of Justice

Chair, Cabinet Social Wellbeing Committee

SEVENTH PERIODIC REPORT UNDER THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT: REQUEST TO RELEASE THE DRAFT REPORT FOR PUBLIC CONSULTATION

Proposal

1. I seek approval to release New Zealand's draft seventh periodic report under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention) for public consultation.

2. I also seek authorisation to approve the final version of the report, in consultation with relevant Ministers, for submission to the United Nations Committee against Torture (the Committee) later in 2019.

Executive Summary

3. New Zealand ratified the Convention on 10 December 1989. The Convention prohibits torture and other ill-treatment of persons, with a focus on persons in detention. States Parties must take effective measures to prevent torture and ill-treatment and appropriately address any occurrence of torture or ill-treatment. The Convention requires States Parties to report periodically to the Committee on the progress made toward the implementation of the Convention. New Zealand's seventh periodic report is due by 15 May 2019.

4. The Government values civil society input. The Ministry of Justice has conducted early consultation sessions with civil society prior to drafting the report. The Committee also expects States Parties to undertake public consultation before submitting reports. I seek approval to release the attached draft report for public consultation in March/April 2019.

5. The draft report takes a constructive approach in explaining issues New Zealand is facing and what is being done to address these issues. Some topics contained in the draft report may attract attention during the public consultation process. The Ministry of Justice has developed a communications plan to manage any enquiries.

6. In consultation with relevant agencies, the Ministry of Justice will revise and update this draft report following public consultation. Consistent with other treaty reporting processes, I request that Cabinet authorise me to approve the final report in consultation with relevant Ministers.

Background

7. New Zealand ratified the Convention on 10 December 1989. The Convention prohibits torture and other ill-treatment of persons, with a particular focus on persons in detention. Ultimately, the Convention aims to protect the dignity of the human person. States Parties must take effective measures to prevent torture and ill-treatment, and appropriately address any occurrence of torture or ill-treatment.

8. New Zealand has accepted the Committee's jurisdiction to receive communications (complaints) from individuals claiming they have been subjected to torture or ill-treatment in New Zealand.

9. New Zealand also ratified, in 2007, the Optional Protocol (OPCAT). Under OPCAT, New Zealand established an independent 'National Preventive Mechanism' (NPM) to monitor all places of detention and report publicly on findings. These functions are jointly carried out by the Human Rights Commission (with a coordinating function), the Children's Commissioner, the Ombudsmen, the Independent Police Conduct Authority (IPCA) and the Inspector of Service Penal Establishments.

10. Similar to many other human rights treaties, the Convention requires its signatories to report periodically to the Committee on the progress made toward implementation. The final report will be published on the UN website. The reporting process supports the Government's goal to protect our people's human rights and to be held accountable for its actions. The reporting process also supports our international reputation as a committed leader in the human rights field.

11. About one to two years after submission, the Committee will examine the report with a delegation from New Zealand answering questions in Geneva. Soon after, the Committee will make recommendations to inform the Government's work.

12. The report covers the period from January 2014 to May 2019. The draft report illustrates New Zealand's ongoing commitment to the protection and promotion of human rights. It takes a constructive approach in explaining issues New Zealand is facing and what is being done to address these issues. Data is provided where available. The report is accompanied by appendices containing detailed data tables.

13. The report is a response to the specific 2017 'List of Issues' (attached), which are questions from the Committee. There is a strict word limit (21,200) for the report.

14. The List of Issues covers a wide range of topics. A table listing them is attached to the Cabinet paper. Topics of particular interest are discussed below.

Public consultation

15. I seek your approval to release the attached draft report for public consultation.

16. This Government values the public's input. The Ministry of Justice has conducted several early consultation sessions with civil society prior to drafting the report. The Committee expects States Parties to undertake public consultation on draft reports before submitting reports and this is best practice. As it has with other recent draft reports, the Ministry of Justice intends to make this draft report available on its website and to invite submissions from non-governmental organisations and others

with an interest in human rights. This will include the appendices (detailed data tables).

Topics of particular interest in the draft report

17. Some issues responded to in the draft report may attract particular interest.

18. A communications plan has been developed to manage enquiries. The Ministry of Justice will respond to enquiries about New Zealand's general obligations under the Convention and about Justice topics. Other agencies will respond to questions relating to their own areas of responsibility, and will be requested to inform the Ministry of Justice of all queries.

19. Areas of particular interest are noted below, alongside the responsible agencies.

Monitoring places of detention under OPCAT (issues 4, 26, Ministry of Justice, New Zealand Police)

20. The Committee requested information on the National Preventive Mechanisms (NPM), the agencies that monitor New Zealand places of detention under OPCAT. In particular, the Committee was concerned about the perceived lack of independence of the IPCA. Our NPM agencies will pay particular attention to our response.

21. The report provides information on the NPM agencies' funding and monitoring activities. The Ombudsman's responsibilities have been amended to cover aged-care facilities which he will start monitoring in 2019. The report also includes information on changes to IPCA practices ensuring more independence from New Zealand Police.

Violence against women (issue 5, Ministry of Justice, New Zealand Police)

22. The report updates the Committee on the enhanced efforts to reduce the occurrences of, and improve the response to, violence against women. This includes new legislation and the 2018 Joint Venture to deliver an integrated, whole-of-government approach to reduce family and sexual violence.

Rights of asylum seekers and refugees (issues 7, 8, 23, Ministry for Business, Innovation and Employment)

23. The Committee raised concerns about statutory standards of protection of asylum seekers and undocumented migrants, commenting on the application of detention for asylum seekers and refugees of security-concern, particularly in relation to a potential mass arrival. It also asked about the measures in place for the protection of victims of torture among asylum seekers and other vulnerable (e.g. traumatised) refugees.

24. The report explains that most of our refugees are UNHCR quota refugees who have recognised refugee status. There are separate statutory provisions for asylum claimants, who under certain circumstances, may be detained. Only a very small number are detained in prisons. Those in detention are still entitled to health care and have access to legal avenues. The report explains how guidelines, training of personnel and the availability of health services support the protection of vulnerable (e.g. traumatised) refugees and asylum seekers.

The criminal justice system and prisons (issues 18 and 19, 21 Ministry of Justice, Department of Corrections, New Zealand Police, Ministry of Health)

25. The report responds to the Committee's question about overpopulation of prisons, use of Police cells as overflow-prisons, prolonged pre-trial detention, health-care in prisons, strip-searching, segregation practices and prisoner violence.

26. The report acknowledges that the prison population has grown significantly in recent years and explains the process of criminal justice reform that is expected to address this issue. The report notes that prisoner numbers have decreased since peaking in March 2018. s9(2)(g)(i) [redacted]

27. The report also describes steps taken to address the 2017 recommendations of the Waitangi Tribunal in relation to measures to reduce Māori reoffending rates. The Tribunal found a breach of Te Tiriti.

28. Data on serious prisoner violence is given and measures to reduce violence are explained.

Solitary confinement (seclusion) and restraint (issues 19, 20, *Ministry of Health, Department of Corrections, Oranga Tamariki-Ministry for Children, New Zealand Police)*

29. s9(2)(g)(i) [redacted]

30. s9(2)(g)(i) [redacted]

Young persons in detention (issue 20, Oranga Tamariki-Ministry for Children, Department of Corrections, New Zealand Police, Ministry of Justice)

31. The Committee requested information on how New Zealand meets the needs of minors in detention and on reports of inconsistencies of treatment.

32. The report provides information on the inclusion of 17-year-olds in the youth justice system from July 2019, which means that Oranga Tamariki facilities rather than prisons will be the default place of detention for them. It also provides information on age-appropriate programmes and supports in youth units in prisons as well as the new child-centred focus of Oranga Tamariki. Oranga Tamariki's new operating model will inform its approach to all Oranga Tamariki facilities, including youth justice residences.

33. Concerns have been raised about young persons being held in Police cell for periods over 24 hours, usually due to unavailability of a suitable Oranga Tamariki facility. The report provides information on efforts to reduce the number of young persons being held in Police cells.

34. The report also explains that, in New Zealand, minors are not always separated from adults in places of detention. This separation is, in general, required under the Convention for the Rights of the Child. However, NZ has reserved its right not to apply this provision.

Deaths in custody (issue 22, New Zealand Police, Ministry of Justice, Department of Corrections, Ministry of Health)

35. The Committee requested information on deaths in custody and in particular on one specific death in Police custody (Mr Sentry Taitoko).

36. The report provides data on deaths in custody. Some detail is withheld due to privacy concerns.

37. The report describes the investigations of two deaths in Police custody - a person dying due to intoxication and a suicide in a court cell. Recommendations from both IPCA reports were accepted and actioned, including through training of Police officers and a comprehensive upgrade to all court cells to make them safer. The report also mentions a death in a dementia unit where, in 2018, the Health and Disability Commissioner found the service provider to be in breach of the Code of Consumer Rights.

Non-consensual commitment on health-care grounds (issue 24, Ministry of Health, Ministry of Justice, New Zealand Police)

38. The Committee requested data on persons detained for health reasons and information on safeguards and alternative treatments. It specifically asked about persons with intellectual disabilities.

39. The report provides data as far as available and information on legislative safeguards, however data is not complete. There are a number of grounds for healthcare detention and there are some concerns about safeguards. The Human Rights Commission recently raised issues around aged-care detention, including lack of authorisation in many cases.

40. Another related topic that may be raised during consultation is detention of persons with mental health issues, or of disabled people exhibiting challenging behaviour, in Police cells, awaiting psychiatric assessment. The report outlines agency work to reduce the need for this and data overall shows a reduction in the reporting period.

41. The report mentions the Government's Inquiry into Mental Health and Addiction Services. It is likely that there will be some significant updates to the report prior to its submission if further Government decisions are made before that time.

Complaints and investigations, complaints mechanisms, and redress and compensation provided (issues 25, 26, 29, relevant for all agencies responsible for places of detention)

42. The Committee requested information on complaints of torture or ill-treatment, investigations and criminal proceedings, complaints mechanisms and redress and compensation provided.

43. The report provides information on the complaints mechanisms available for all places of detention. There have been no convictions for acts of torture. However,

comprehensive national data on complaints and proceedings relating to ill-treatment, as well as on compensation provided by agencies is not available. This may attract some critical comments.

Operation Burnham (issue 27, New Zealand Defence Force)

44. The Committee requested information on the investigation of 'Operation Burnham' in Afghanistan. The report provides information on the inquiry established in 2018. A report on the inquiry is unlikely to be available prior to submission of this report to the UN Committee.

Historic experiences of cruel treatment (issue 28, Department of Internal Affairs, Ministry of Health, Ministry of Social Development)

45. The Committee asked about resolution of claims of historic abuse. In addition to discussing the existing resolution mechanisms, the report provides information on the Royal Commission of Inquiry established in 2018.

Breach of Convention found following individual communication (issue 29, Department of Corrections)

46. s9(2)(g)(i) [redacted]

Next steps

47. Following Cabinet approval, public consultation is planned to start in late March 2019. The Ministry of Justice will, in consultation with relevant agencies, revise the report as required and update information to reflect new developments. I request that Cabinet authorise me to approve the final report in consultation with relevant Ministers. This is the standard process for treaty reporting in New Zealand.

48. The final report will be examined by the Committee in Geneva with a delegation from New Zealand present to answer questions from the Committee. We do not have a tentative date yet but expect this will happen in 2021.

Consultation

49. The report is based on the information provided by responsible agencies. The following agencies have been consulted on this draft paper and the draft report: Department of the Prime Minister and Cabinet (National Security Group), Ministry of Foreign Affairs and Trade, Department of Corrections, Ministry of Social Development, Ministry of Health, Crown Law Office, New Zealand Police, Ministry of Business, Innovation and Employment, New Zealand Defence Force, Oranga Tamariki–Ministry for Children, Department of Internal Affairs, New Zealand Customs Service.

50. The following agencies and Crown entities have been consulted on the draft report: Ministry of Women's Affairs, Te Puni Kōkiri, Ministry of Pacific Peoples, Office for Disability Issues, Office for Ethnic Communities, Office for Māori Crown Relations –

Te Arawhiti, Human Rights Commission, Office of the Children's Commissioner, Office of the Ombudsman, Independent Police Conduct Authority, Inspector of Service Penal Establishments.

Financial Implications

51. There are no financial implications for Government arising from the recommendations in this paper.

Legislative Implications

52. There are no legislative implications arising from this paper.

Regulatory Impact Analysis

53. A regulatory impact statement is not required.

Human Rights

54. Submitting the final report to the Committee is required to meet New Zealand's international human rights obligations and ultimately supports the protection and promotion of New Zealanders' human rights.

Te Tiriti o Waitangi

55. There are no Te Tiriti o Waitangi implications associated with the recommendations in this paper. However, some of the issues discussed in the report, such as the high incarceration rates, have particular relevance for Māori.

Gender Implications

56. There are no gender implications associated with the recommendations in this paper. There are gender implications in some subject matter parts of the report, most notably the issue of violence against women.

Disability Perspective

57. There are no disability implications associated with the recommendations in this paper. However, some of the subject matters reported on will be relevant for persons with disabilities, for example involuntary commitment or seclusion and restraint. Persons with disabilities, including with mental health conditions, are also over-represented in the criminal justice system.

Publicity

58. A press release may be issued calling for submissions on the draft report. The Ministry of Justice will also contact stakeholders directly to invite them to make submissions.

Proactive Release

59. I propose to proactively release this paper as part of the release of the report for consultation.

Recommendations

60. The Minister of Justice recommends that the Social Wellbeing Committee:

1. **note** that New Zealand is required to submit its seventh periodic report under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to the Committee against Torture by 15 May 2019
2. **approve** release for public consultation of attached draft seventh periodic report (including appendices) under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
3. **authorise** the Minister of Justice, in consultation with relevant Ministers, to approve the final version of New Zealand's seventh periodic report (including appendices) under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Authorised for lodgement

Hon Andrew Little

Minister of Justice

Attachments:

1. Draft seventh periodic report under the Convention against Torture with appendices
2. Committee against Torture's 2017 'List of Issues' prior to reporting
3. Table listing the issues and responsibilities of agencies and Ministers

New Zealand's Seventh Periodic Report under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

DRAFT REPORT FOR PUBLIC CONSULTATION

May 2019

Contents

I. Introduction

1. New Zealand is pleased to present its seventh periodic report to the United Nations Committee against Torture, responding to the Committee's list of issues prior to the submission of the seventh periodic report, dated 9 June 2017 (CAT/C/NZL/QPR/7).

2. New Zealand is committed to protecting human rights. We are a small country that is proud of its record as a contributor, nationally and internationally, to human rights. Nevertheless, there is always room for improvement and we value the engagement with other countries and international bodies to better protect human rights.

3. Prior to drafting the report, public engagement sessions with civil society were held. Topics raised by civil society included the criminal justice system, conditions in prisons, family violence and the process to implement treaty bodies' recommendations. The Government also publicly consulted on the draft report in early 2019. (detail to be inserted following consultation)

4. The report is organised according to the list of issues. Key data is contained in the body of the report. More detailed data is in appendices.

Summary of key developments

5. Legislative and other changes since our last periodic report to the Committee include:

- *Hāpaitia te Oranga Tangata* – the Safe and Effective Justice programme, started in 2018, to reform the criminal justice system. The goal is to reduce the high incarceration rates by 30% within 15 years and address the disproportionate representation of Māori
- enhanced efforts to combat gender-based violence
- 2018 amendments to the National Preventive Mechanism responsibilities, including for detention in private aged care facilities
- expanding the Office of the Inspectorate for prisons' role
- joining the Global Alliance for Torture-Free Trade in 2018
- supporting the Global Compact for Safe, Orderly and Regular Migration
- large scale inquiries into historic abuse in state care, the mental health system, and military activities in Afghanistan
- the Criminal Records (Expungement of Historical Homosexual Convictions) Act 2018
- the establishment of the Criminal Cases Review Commission (para. 322)
- doubling the refugee quota to 1,500 yearly. In addition, 600 places were offered to Syrian refugees in 2016
- in 2017, the formation of an International Human Rights Governance Group leading cross-government work on human rights reporting
- a programme aimed at eliminating seclusion in the health sector by 2020
- the establishment of Oranga Tamariki-Ministry for Children in 2017, with a child-centered operating model and increased focus on the needs of Māori children
- a first conviction for people trafficking, but no prosecutions for torture.

II. Specific information on the implementation of Articles 1–16 of the Convention

Articles 1 and 4

2. Incorporation into domestic law

Protection of human rights within New Zealand's Constitution

6. New Zealand does not have a single written constitution. Our constitution is located in a range of sources, including legislation, common law, the Treaty of Waitangi/Te Tiriti o Waitangi (our founding document, the 1840 agreement between Māori and the Bristish Crown), court decisions, constitutional convention, parliamentary custom and customary international law. The Human Rights Act 1993, the New Zealand Bill of Rights Act 1990 (NZBORA) and the Crimes of Torture Act 1989 are the cornerstones that specifically promote and protect human rights.

7. The Human Rights Act prohibits discrimination in the private and state sector. It also sets out the role of the Human Rights Commission (HRC, our national human rights institution) and the Human Rights Review Tribunal.

8. NZBORA sets out obligations relating to civil and political rights arising from the ICCPR. Section 9 prohibits torture and other cruel treatment which mirrors the Convention against Torture. Section 23 (5) states 'Everyone deprived of liberty shall be treated with humanity and with respect for the inherent dignity of the person'.

9. The Crimes of Torture Act expressly prohibits any act of torture against another person in or outside of New Zealand. The penalties for the offence of torture (including attempts, aiding, abetting and inciting) are comparable to those for other serious offences such as grievous bodily assault and attempted sexual violation.

10. While these Acts are not supreme law, NZBORA and, by inclusion, the Human Rights Act, hold a special status as explained in our 6th periodic report (para. 13).

Constitutional developments

11. New Zealand's National Plan of Action on Human Rights, Mahere Rautaki ā-Motu, was developed to record UPR recommendations and monitor progress made in achieving the accepted recommendations. It is an online tool developed by the Human Rights Commission enabling tracking Government actions relating to recommendations. It is updated regularly and is being revised to incorporate treaty body recommendations and the Sustainable Development Goals. The Plan was updated in 2018 to record Convention Against Torture recommendations.

12. The Legislation Bill proposes to require ministries to publish 'disclosure statements' on Government Bills which must include an assessment against domestic and international human rights obligations. This will increase public scrutiny of proposals and promote the inclusion of human rights considerations in the policymaking process.

13. In 2018, the Supreme Court confirmed that the Courts have jurisdiction under the NZBORA to declare legislation inconsistent with this Act. While a declaration does not affect the validity of legislation, it can help strengthen human rights protections and inform Parliament that the courts consider an Act to be inconsistent with human rights. In 2019, the Government will progress law changes to ensure an effective response when the Courts make declarations of inconsistency.

14. In 2018, the Government established a stand-alone agency with the purpose of strengthening the engagement between Māori and the Government (Te Arawhiti – Office for Māori Crown Relations).

15. There are no plans to review the constitutional arrangements.

Case law

16. References to the Convention in judgments are rare, because courts would usually cite the equivalent provisions in the domestic NZBORA.

17. An example, where the Supreme Court discussed the Convention is *Vogel v. Attorney-General* ([2014] NZSC 5) on extended seclusion in prison (details para 347).

18. Examples of application of ss9 and 23(5) NZBORA:

- *S v NZ Police* (2018): breach of s23(5), right of detainees to be treated with dignity by Police. Details below, para 363
- decision in *R v Harrison* [2016] NZCA 381, [2016] 3 NZLR: right not to be subjected to disproportionately severe treatment or punishment (s9) affecting interpretation of an Act
- *Taylor v Attorney-General* [2018] NZHC 2557: Court awarding $1,000 per prisoner in compensation for a breach of NZBORA through unreasonable strip search.

Article 2

3. Rights of people in custody

19. Section 23 NZBORA requires that all detainees are informed of their rights at the time of arrest or detention and of the charges against them, which includes:

- being informed of the reasons
- consulting a lawyer without delay
- being charged promptly or released
- being brought before a court as soon as possible
- being treated with humanity and respect.

20. For Oranga Tamariki residences, regulations require that explanations of rules must be appropriate given the child's age, culture, language, and capacity to understand. A copy of the residence's rules and grievance procedures must be publicly displayed in residences. A child receives an explanation and copies of information about:

- what to expect from the agency
- rights and duties including complaints
- rules of the specific residence
- Residential Care Regulations and other legislation (copies on request).

21. National Care Standards will come into force in July 2019 setting out binding standards for all children in state care. They include a child-friendly Statement of Rights.

22. The Code of Health and Disability Services Consumers' Rights includes the right to effective communication in an adequate form, language, and manner. Guidance for service providers is available, including for the disabled community.

23. Police Instructions (guidance provided to every officer) are designed to ensure police staff are aware of their legal obligations and the standards expected of them. They include the operational policy staff must follow when advising detainees of their rights while in custody. Once detainees have been informed of their rights, staff and detainee sign the 'Notice to Person in Custody' form. If the detainee is unable to read the notice, they can have it read to them. Notices in different languages and interpreters are available.

24. Further to this, all frontline officers have a 'rights caution card' to read out to the person being arrested or detained, or where police want to question someone where there is sufficient evidence to charge that person with an offence. This ensures every detainee is informed of all their rights consistently.

25. In addition, we refer to paras. 17-31 of our previous report.

4. National Preventive Mechanism (NPM)

26. The structure and responsibilities of, and budget processes for, the New Zealand NPM were outlined in the 6th periodic report and the one year update report. There were no changes to the basic structure or underlying legislation. All five NPMs are independent of Government. The NPM agencies continue to work well together, including through collaborating at site visits, sharing best practices and working on common themes. The annual OPCAT reports are tabled in Parliament.

Amendments to the designations

27. In 2018, the Minister of Justice amended NPM designations to ensure they remain fit for purpose. In particular, detention in private aged-care facilities was expressly included in the Ombudsmen's designation. The Chief Ombudsman is preparing a budget bid to examine and monitor these facilities. This will enhance the protection of elderly in the approximately 200 facilities and address concerns raised by the SPT and the NPMs. Some further minor amendments were made to clarify designations.

28. There may be further amendments relating to places of detention for children. These will be considered following the ongoing review of the independent oversight of the Oranga Tamariki system.

Funding

29. Like many other Government funded agencies, NPMs need to operate within an environment of financial restraint, however they are able to regularly inspect relevant facilities.

NPM funding 2017/18

	Funding for all functions	**OPCAT appropriation**
Human Rights Commission (HRC)	Approx. $10m	Approx. $5-10,000 for operational cost but excluding personnel cost (not budgeted separately)
Ombudsmen	$16.725m	$1,127,000 (for 'monitoring of detained people')
Independent Police Conduct Authority (IPCA)	$4.2m	$55,000 (but see para. 30)
Children's Commissioner	$2,657,000 (including a one-off $500,000)	No specific appropriation
Inspector of Service Penal Establishment (ISPE)	N/A	Performs functions within general budget as Registrar of the Court Martial

30. IPCA received an overall increase in baseline of $481,000 from 2018/19. IPCA had requested a $75,000 increase for OPCAT. The baseline increase does not specify an OPCAT portion and internally, IPCA does not separately budget for OPCAT work. More information on IPCA see issue 26.

Selected Activities:

31. The NPMs regularly monitor places of detention in New Zealand and are able to ensure a broad coverage.

32. For example, in 2016/17, the Children's Commissioner inspected all nine secure Oranga Tamariki facilities and one out of three Mother-Baby-Units in prisons. The Ombudsmen (responsible for approximately 110 places of detention) carried out 57 visits, including 13 formal inspections. The ISPE carried out two unannounced visits in the military detention facility. Due to the large number of Police facilities (400), the IPCA applies a different approach and uses opportunities during the ordinary course of work to inspect facilities on no-notice basis. It also undertakes audits of Police custody records and works with Police to develop and monitor appropriate standards. In 2018/19, it will undertake a programme of detailed inspections of the 32 Police custody units where detainees are currently held overnight.

33. In addition to inspection reports, the NPMs also published a number of thematic reports, including:

- 'He Ara Tika – a Pathway Forward' (2016) – HRC report on OPCAT and aged-care and disability facilities (funded through the Torture Prevention Ambassadors project)
- 'Thinking outside the Box' by Dr Shalev (2017) - on seclusion and restraint (commissioned by the HRC, supported through OHCHR's special OPCAT fund)
- 'A question of restraint' (2017) by the Chief Ombudsman (on care of prisoners at risk of self-harm)
- 'This is not my home' (2018), a HRC compilation of essays on aged residential care
- 'State of Care' (2017), the Children's Commissioner's report on secure residences.

5. Combat of gender-based violence

34. Our rates of gender-based violence are high.

Family Violence investigations

	2011	2012	2013	2014	2015	2016	2017
Total family violence investigations	89,877	87,634	95,061	101,465	110,129	118,923	121,753
At least one offence recorded	44,486	40,682	37,902	37,194	38,340	41,128	39,680
No offence recorded	45,391	46,952	57,159	64,271	71,789	77,795	82,073

Prosecutions and Convictions for Male Assaults Female 2011-2018

	2010/11	2011/12	2012/13	213/14	2014/15	2015/16	2016/17	2017/18
Number of charges prosecuted	5,670	5,091	5,063	4,113	4,134	4,692	4,792	4,745
Number of convicted charges	3,906	3,501	3,448	2,980	2,869	3,292	3,322	3,288
% of charges prosecuted	*69%*	*69%*	*68%*	*72%*	*69%*	*70%*	*69%*	*69%*

35. Between 2014 and 2017, a Ministerial Group on Family Violence and Sexual Violence was set up to develop a comprehensive response and range of measures to significantly improve responses to gender-based

violence. Workforce Capability Family Violence Risk Assessment and Management Frameworks were released in 2017.

36. In 2017, a political position of Parliamentary Under-Secretary (Domestic and Sexual Violence Issues) was created. They lead a group of Ministers coordinating cross-government work; the Government's engagement with the community; and oversee operational improvements.

37. In 2018, the Government announced a Joint Venture model at agency chief executive level to deliver an integrated, whole-of-government approach to reduce violence. The Joint Venture developed a single package for budget 2019 to align and prioritise government resources.

38. The 2017/18 budget invested significantly to combat violence: An additional $76m over four years were invested in frontline social services working with families impacted by family violence. Sexual abuse and treatment services received an additional $7.5m over four years to deliver medical treatment, forensic services and referrals. This additional funding built on increased funding of $46m over four years provided in Budget 2016/17 for specialist services for victims and perpetrators.

Legislation

39. The new Family Violence Act will fully enter into force in July 2019. It aims to prevent, identify and address family violence. Its key features are:

- a more integrated response to family violence, including increased ability to access risk and needs assessments and services, codes of practice, and new information-sharing provisions
- improving accessibility and effectiveness of protection and Police safety orders
- improving the justice response, including creating three new criminal offences and more accurate recording of family violence.

40. In 2018, Parliament also passed legislation allowing victims of family violence to take leave from their employment, separate from sick leave or annual leave, to help them out of violent situations. This is a world first.

Police-led initiatives

41. Under the Safer Whānau (families) programme, Police partners with Māori groups, community and other agencies to assist the most vulnerable and disadvantaged communities.

42. Changes to Police practice and training will prevent further victimisation and offending. Police will be able to recognise patterns of harm and adverse circumstances earlier and take a holistic view of the broad range of issues occurring within whānau. Police has also introduced new risk measures and a graduated response model of safety actions.

43. Police has designed a family harm investigation app to assist officers at a family harm investigation to collect information, and determine whether offences have occurred and safety concerns at a scene. Police is testing on-scene video interviews for victims of violence to improve quality of evidence and reduce re-victimisation.

44. At three sites, Police is testing a new response model to family violence partnering with communities, Māori and social sector agencies (Whāngaia Nga Pa Harakeke). Police and community workers respond together post initial attendance aiming at preventing reoffending and re-victimisation. An evaluation is in progress with early promising signs of reductions in reoffending and victimisation.

45. In 2016, a new Integrated Safety Response model pilot was launched in two districts. The multi-agency model provides an enhanced response to family violence episodes and high-risk prison releases. This is achieved through improved information sharing, risk assessment, and safety planning, and family-centred assistance. An evaluation of the first year has delivered promising results. Proximity alarm systems are being tested.

46. In 2015 Police launched a scheme facilitating disclosure of information to a person about the previous violence committed by their partner. Disclosure, aiming at harm prevention, may be made upon request or proactively.

Improved data collection

47. Family and sexual violence data comes from national crime surveys, carried out in 2006, 2009 and 2014. Those surveys are helpful in ascertaining prevalence of family violence as only about 24% of offences are reported to Police. The survey was redesigned to allow collection of richer data, including relationships between victims and perpetrators. Family violence was prioritised in the 2018 survey and the Crime and Victims Survey to be published in 2019.

48. Evaluations were conducted to establish baselines for sexual violence victims' experience of the justice sector, and the effectiveness of programmes for victims and perpetrators.

Additional services for victims

49. As shown in the budget data, significant investment was made into services for victims. Full medical services, including counselling, are available. A new sexual harm helpline opened in 2018. (Further information on victims' rights see para. 354).

50. E Tu Whānau and Pasefika Proud are family strength based programmes aimed at delivering culturally appropriate responses to violence for Māori and Pacific peoples.

51. New resources are being developed to help victims and their supporters understand the justice process. The Government is investigating options to minimise the harmful aspects of court processes for victims.

6. Trafficking in persons

52. We combat trafficking through a whole-of-government approach encapsulated in the National Plan of Action to Prevent People Trafficking, which is being refreshed. It is expected this will move us towards being able to ratify the 2014 Protocol to the Forced Labour Convention.

53. Immigration New Zealand (INZ) is the lead agency chairing the Interagency Working Group on People Trafficking comprising 12 agencies.

54. INZ has carried out a range of training, including for the Labour Inspectorate and Crown Prosecutors. Training with the Customs Service is in planning. INZ has dedicated staff for human trafficking to oversee the implementation of the Action Plan. The Serious Offences Unit focusses on investigating and prosecuting the most serious or complex offending, including human trafficking and migrant exploitation. New Zealand actively investigates financial flows linked to trafficking. INZ works closely with Police's Financial Intelligence and Asset Recovery Units.

55. INZ has a strong partnership with non-governmental stakeholders to prevent trafficking, protect victims, and prosecute offenders. The 'Consultive Group' comprises Anglican Diocese of Wellington, Auckland University, New Zealand Prostitutes' Collective and Stand Against Slavery.

56. In 2017, the Government adopted new measures stopping employers who breach immigration and employment law from recruiting migrant workers. More than 70 employers were prevented from recruiting migrants for varying periods since the new rules came into effect. More than 100 employers are on the 'stand-down-list'.

57. New Zealand is an active participant in the Bali Process, including the Regional Office and various Working Groups.

Prosecutions and convictions

58. The first people trafficking charges were brought in 2015. Two men were charged for arranging, by deception, the entry of 18 Indian nationals. They were acquitted on the trafficking charges, but one was convicted on other charges.

59. The first person convicted of people trafficking was sentenced in 2016 to nine years and six months in jail and ordered to pay $28,167 reparation to his victims. The Fijian national was convicted of 15 human trafficking charges and a further 27 Immigration Act offences involving victims of Fijian nationality.

60. In 2017, a person was charged with 46 Immigration Act offences and sentenced to 12 months' home detention and a reparation order of $55,000 based on four representative charges.

61. In November 2017, people trafficking charges were laid against two Bangladesh-born New Zealand citizens. The couple were charged for arranging, by deception, the entry of two Bangladeshi nationals into New Zealand and face additional charges, including for worker exploitation. A jury trial is set for 2019.

62. In December 2018, people trafficking and slavery charges were laid against a New Zealand resident Samoan national, including eight of arranging entry by deception and 10 counts of using a person as a slave.

Reported victims of trafficking*

	2014	**2015**	**2016**	**2017**	**2018**
Children (under 18) – males	0	0	0	0	
Children – females	0	0	0	1	
Total children	0	0	0	1	
Adult males	0	18	13	2	9
Adult females	0	0	6	0	1
Total adults	0	18	19	2	10
Total	0	18	19	3	10
Origin		India	Fiji Bangladesh	N/A	Samoa

* Victims identified refer to criminal charges laid

Legislation

Crimes Amendment Act 2015

63. Slavery, servitude, forced labour, and trafficking in persons are all prohibited under the Crimes Act 1961. A 2015 amendment includes trafficking within, as well as into and out of, the country.

Immigration Amendment Act 2015

64. The Immigration Amendment Act 2015 aims at combatting migrant exploitation. Employers exploiting temporary migrant workers will face a jail term of up to seven years and/or a fine up to $100,000, and employers who hold a residence visa will be liable for deportation if the offence was committed within 10 years of gaining residence. New provisions include enhanced search powers for immigration officers, responsiveness to new technology, more sustainable funding and changing collection of biometric information.

Amendments to Fisheries Act

65. From 2016 all foreign charter fishing vessels are required to operate under New Zealand jurisdiction and laws, strengthening protection of crews' human rights.

Prostitution Reform Act

66. The Prostitution Reform Act 2003 aims to prevent migrant exploitation by prohibiting visa applicants to engage in prostitution work.

67. Most trafficking in New Zealand is linked to other industries (horticulture, construction, service). There are occasional individual reports of exploitation of foreign sex workers, however, investigations showed no evidence of systemic exploitation. No instances of trafficking were confirmed and, in recent years, the Labour Inspectorate has received no complaints of exploitation. Police also report there were no allegations of foreign sex worker exploitation or trafficking meeting the threshold for prosecution. 2018 independent research on the migrant sex industry in New Zealand commissioned by the relevant Ministry found no evidence of trafficking.

68. Exploitation of foreign sex workers remains a risk and agencies remain vigilant.

Reparation for victims

69. Victims can obtain compensation through the criminal process. Financial reparations can be sought from anyone convicted of crimes where the victims were financially affected and can be based on loss of wages resulting from exploitation or trafficking. Victims can make civil claims for restitution via assets forfeited as a result of accumulation via criminal offending, without this claim requiring a criminal conviction.

Agreements with countries

70. New Zealand signed an arrangement with the Philippines in 2015 on the recruitment and treatment of migrant workers. It intends to reduce the vulnerability and potential for exploitation of workers by improving the transparency of recruitment and ensuring compliance with both countries' rules. Key areas of cooperation are debt bondage, unfair debt arrangements, and excessive deductions from salaries, which are potential indicators of trafficking.

Article 3

7. Refugees and asylum seekers

71. New Zealand takes part in the UNHCR refugee resettlement programme and therefore, most refugees do not go through our asylum application process. In 2018, the government increased the annual refugee quota to 1,500 effective 2020 (from 750 originally).

Legal Framework

72. Under the Immigration Act 2009, all asylum applications are first considered under the Refugee Convention, then the Convention against Torture and, if still unsuccessful, the ICCPR. Therefore, if a person falls under the Refugee Convention, there will be no assessment under the Convention against Torture. In the reporting period, three people at initial determination did not meet the refugee definition but met Article 3 of the Convention against Torture.

73. In relation to Article 3 of the Convention, under s164 of the Immigration Act, no person claiming refugee or protected person status may be deported unless Article 33.2 of the Refugee Convention applies. A person recognised as being protected cannot be deported where there are substantial grounds for believing they would be in danger of torture or cruel treatment.

74. The provisions relating to mass arrivals have never been applied. Asylum cases, including those under mass arrival, are assessed on a case-by-case basis by trained INZ staff. For detention see issue 23.

Refugee settlement

75. The Refugee Resettlement Strategy aims to enable refugees to quickly achieve self-sufficiency and social integration. UNHCR ('quota') refugees undergo a six-week reception programme at Mangere Refugee Resettlement Centre (MRRC) which provides them with information on living and working in New Zealand. On moving into the community, they are provided up to 12 months settlement support to link them to the services they require. A "Convention Refugee Navigator" position is being piloted. The role aims to improve outcomes through settlement plans linked to existing services.

76. Quota refugees have access to comprehensive facilities at MRRC, including food, a weekly allowance, medical and social services, recreation facilities, telephone, email. All quota refugees are provided medical screening before arrival and again at MRRC. Screening at MRRC includes mental health. Initial treatment is provided with referrals to further services as appropriate.

Protection of vulnerable persons and victims

77. Applications concerning detained asylum seekers (see para. 255) are given priority. Officers are encouraged to process all vulnerable claimants in a timely and sensitive fashion. Guidelines were developed regarding the treatment of children in the process and are under development for persons presenting with serious mental health issues, including victims of torture. Determining whether a claimant is a victim of torture is an integral part of the asylum application process. Further information on training see issue 16. Claimants can present medical evidence during their claim. Asylum seekers are eligible for legal aid and most are represented by a lawyer.

78. Approved refugees have the same access to government-funded services (such as employment, education, public health, housing, benefit) as other New Zealand residents. Health services include primary health care and counselling/psychological if referred to.

79. The majority of asylum seekers live in the community, on temporary visas. Asylum seekers who have made a claim for refugee or protection status and are lawfully in New Zealand can apply for particular welfare support (Emergency Benefit and Temporary Additional Support). If they have a valid work visa, they are able to work and apply for government assistance to gain employment. Asylum seekers who have made a claim for refugee or protection status are eligible to access publicly funded health services. Asylum seeker children can attend school.

80. All MRRC residents, including detainees, are informed of the complaints process. Agencies collaborate to address issues. An organisation (Refugees as Survivors New Zealand) also provides onsite support to victims of torture and ill treatment.

8. Asylum applications, returns and extraditions

81. New Zealand does not have a backlog of refugee and protection claims and there are no delays in accessing the system. Processing time at first instance is approximately 20 weeks and for appeals at the Immigration and Protection Tribunal (IPT) generally 4-6 months. Claimants are eligible for legal aid and most are represented by a (government-funded) lawyer. Interpreters are available.

Asylum applications (INZ decisions)

	Applications	Decisions	Approved
2014	288	296	78
2015	351	288	133
2016	387	346	110
2017	449	350	113

INZ does not disaggregate data based on whether torture may have occurred.

Appeals mechanisms

82. Claims are considered, initially, by INZ. INZ must consider the requirement to provide protection as a refugee or from torture, arbitrary deprivation of life, or ill- treatment. If the claim is declined, the claimant can appeal to the IPT.

83. Every appellant may, if entitled, concurrently lodge a deportation appeal on humanitarian grounds. The IPT will consider the refugee and protection appeal first. Where the refugee and protection appeal is unsuccessful, the IPT will consider the deportation appeal.

84. Where any party to an appeal is dissatisfied with the IPT decision, they can seek the leave of the High Court to appeal on points of law within 28 days.

Appeals to the Immigration and Protection Tribunal

	Appeals Received	Decisions	Successful
2014	169	168	76
2015	126	167	65
2016	166	158	55
2017	194	177	63
2018	233	167	91

Deportation of failed asylum claimants 1 March 2014 - 2 August 2018

	2014/15	2015/16	2016/17	2017/18	2018/19	Totals
Adults:	**27**	**36**	**33**	**35**	**5**	**136**
Male	24	25	31	26	5	111
Female	3	10	1	9	0	23
Not recorded	0	1	1	0	0	2
Minors:	**2**	**8**	**0**	**0**	**0**	**10**
Female	0	6	0	0	0	6
Male	2	2	0	0	0	4
Totals	**29**	**44**	**33**	**35**	**5**	**146**

Detailed information not provided for privacy reasons.

Consideration of torture in extradition and return

85. Surrender cannot be ordered if it appears there are substantial grounds that the person is in danger of being subjected to torture in the requesting country (s30(2)(b) Extradition Act 1999).

86. If surrender is ordered, the person may apply for judicial review in the courts. The review decision may also be appealed.

87. By convention, no steps will be taken to give effect to a decision to surrender:

- if the person indicates they will seek judicial review (if application is filed promptly); and
- while any proceedings (including appeals) are continuing.

Mr. Clicman Soosaipillai

88. In 2001, Mr Soosaipillai (Sri Lanka) was recognised as a refugee. In August 2015, the Minister of Justice ordered that he be surrendered to Switzerland to face trial for murder. Before making the decision, New Zealand made enquiries of Switzerland regarding refoulment. As a result, the Minister was satisfied that Mr Soosaipillai would not be refouled to Sri Lanka if surrendered. Mr Soosaipillai did not seek judicial review.

Mr. Maythem Radhi

89. The Committee is also referred to Australia's request for extradition of Maythem Radhi to face trial for people smuggling. He is a refugee from Iraq. The Minister of Justice is considering the request.

9. Diplomatic assurances

90. During the reporting period, New Zealand has carried out one extradition (Sungkwan Kim) on the basis of an assurance not to impose or carry out the death penalty. In January 2018, Mr Kim was surrendered to the Republic of Korea to face trial for murder.

91. The Committee is also referred to People's Republic of China (PRC)'s request for extradition of Kyung Yup Kim (who is not a New Zealand citizen) to face trial for murder. In 2015, New Zealand negotiated comprehensive assurances regarding torture and fair trial, including New Zealand Government monitoring rights. The PRC had already provided a death penalty assurance. The Minister of Justice ordered Mr Kim's surrender. This decision is being considered by the courts. The High Court upheld the decisions to surrender. The Court of Appeal is yet to release its decision.

92. New Zealand has not carried out any further refoulements, extraditions or expulsions based on diplomatic assurances, nor has any State offered such assurances. New Zealand has not been required to offer assurances.

10. Statelessness

93. Instances of statelessness rarely occur.

94. Any individual may contact the Department of Internal Affairs to request consideration under the stateless provisions of the Citizenship Act 1977. There is no specific standard of proof prescribed by the Act. In practice, the Department accepts evidence proving the applicant's claim on the balance of probabilities, for example written confirmation they have no claim to citizenship from the authorities of those countries where the applicant might have a claim.

95. The Citizenship Act provides for protections against statelessness. For example, every person born in New Zealand from 1978 is a citizen if they would otherwise be stateless and citizenship can be granted to prevent statelessness. It is rare for citizenship to be registered or granted under these provisions of the Act. In the reporting period, citizenship was granted three times to avoid statelessness.

Articles 5-9

11. Jurisdiction

96. There were no legislative changes in the reporting period. New Zealand has had no prosecutions for torture, crimes against humanity or war crimes.

12. Extradition treaties

97. The Extradition Act 1999 allows New Zealand to make and receive extradition requests without the need for a treaty. The definition of an extradition offence in the Act includes any offence punishable under the law of both New Zealand and the extraditing country with a maximum penalty of at least 12 months' imprisonment which includes torture. New Zealand has not signed any extradition treaties since 2014.

13. Mutual assistance

98. Under the Mutual Assistance in Criminal Matters Act 1992, New Zealand can provide mutual assistance to any foreign country on an ad hoc basis. It is, therefore, unnecessary to enter into mutual judicial assistance treaties or agreements with other countries. There are agreements with China, South Korea and Hong Kong.

99. New Zealand has not been requested to provide mutual assistance by any country in connection with torture.

Article 10

14. Training of enforcement personnel

Prison Officers

100. A module on the Convention against Torture is included in the initial training.

101. All new relevant staff participate in the 'Our Way and Human Rights' e-learning programme, which reinforces a practical understanding of human rights in their role. The effectiveness is not formally evaluated. However, participants are asked to describe relevant challenges at work, rights violations they have seen, and provide feedback on further support needed relating to human rights.

Immigration Officers

102. Immigration officers receive training on the Bill of Rights Act, inter-cultural awareness, questioning, search, arrest, detention and use of force. Code of Conduct training stresses the implications of breaches such as disrespecting, discrimination, or causing distress to, anyone. Any use of force is documented and the training records are available for scrutiny for investigations or complaints.

103. The training of officers is constantly being evaluated and updated because of feedback. All officers are encouraged to report integrity breaches including mistreatment. This process is available to members of the public who have concerns. All reportings are investigated and, as part of this, training received analysed and recommendations actioned.

104. Persons-in-Charge of Mangere Refugee Resettlement Centre receive extensive training on detention rules and regulations.

Oranga Tamariki-Ministry for Children facilities

105. Induction training for Oranga Tamariki staff working in secure residences emphasises their obligations under the Convention on the Rights of the Child, respect for dignity and consequences of inappropriate behaviour. Relevant staff in residences receive training on 'Management of Actual or Potential Aggression' (MAPA) including annual refreshers. MAPA trains staff to manage young people presenting challenging behaviour and is internationally accredited through the Crisis Prevention Institute. New training, co-designed with Police, will replace MAPA.

106. The effectiveness of this training and education is difficult to assess. Rates of incidents requiring use of force or secure care have remained relatively stable since 2014. It is expected that numbers will decrease following the substantial change programme (described under issue 20) which also introduces a new induction programme on OPCAT and a Māori-focused restorative practice model.

Police

107. Police officers receive training as recruits and throughout their career. They must maintain up to date knowledge of legislation, including Bill of Rights Act, Human Rights Act and Crimes of Torture Act. Failure to meet obligations under these Acts may result in misconduct proceedings and, in case of torture, criminal prosecution.

108. Obligations to prisoners are reinforced through Custodial Management Health Risk awareness protocols and Custodial Management Suicide awareness training all officers must complete.

109. Courses are assessed using role-play scenarios looking at application of knowledge and competencies. Police believe the effectiveness of training is best tested by ongoing monitoring of officers' actual conduct through investigating and recording complaints.

15. Less-than-lethal devices

Taser use by Police

110. Police do not routinely carry firearms. Tasers are an important tactical option ensuring the safety of the public and Police. In 2015, Police decided to arm most frontline officers with tasers. Other tactical options include empty-hand-techniques, handcuffs, pepper-spray and firearms. Taser cannot be used unless the behaviour is within the assaultive range of offending.

111. The Police Taser Policy is contained within an overarching use of force policy which is constantly revised. It was first published in 2008 and revised 28 times, most recently in 2017.

Training

112. All officers undergo 16 weeks of initial training and 32 hours of annual refresher training to ensure they have the skills and knowledge to safely use Tasers and other tactical options.

113. 7,500 Police level one responders can carry tasers and firearms. They undergo a comprehensive initial Taser training programme to achieve certification. Training is supported by online and interactive learning modules, power point presentations, videos of actual Taser events, and face-to-face practical training.

114. The initial programme includes:

- function and design
- use, including restrictions
- use of force –powers, policy and the options framework
- post-deployment procedures including rights caution, aftercare, probe removal, medical attention, evidence
- assessment – operation, course of fire, scenarios.

Annual refresher training includes lessons learned from previous operating.

Use and complaints

115. Police's 2017 report on the use of tactical options shows use of force is a rare occurrence (0.1% of 3.5 million formally recorded face-to-face interactions with the public). Taser was used at 26% of use-of-force events. Options more commonly used are empty-hand tactics (30%), restraint (34%) and pepper-spray (32%).

Taser use and outcomes of referrals to Police Professional Conduct (PPC) for investigation

	Use-of-force events	TASER show events	TASER discharge events	PPC Referrals	Not upheld	Upheld	Ongoing
2014	4823	895	119	15	10	5	0
2015	4914	872	126	23	7	7	0
2016	5055	1100	190	26	8	8	1
2017	4536	1003	186	13	3	3	2

Detailed outcomes in Appendix 2

116. Every Tactical Options Report and available taser footage is reviewed by the supervisor and a commissioned officer. All uses involving discharge or contact stun are subject to the national Police Taser Assurance Forum's review. It scrutinises reports, discharge footage, firing logs, and audit trails. The Forum focuses on reporting accuracy, adherence to policy, training, best practice, and lessons learned. It can prepare a report outlining findings or recommendations.

117. Police publishes online detailed annual reports on tactical options use. Additionally, the Independent Police Conduct Authority (IPCA) investigates complaints, monitors and reviews Police use of force, and makes recommendations. At any point, a supervisor can recommend notifying the IPCA (required by legislation for some event types). In 2017, only 12 out of 367 use of force complaints received and notified to IPCA related to taser.

Use of pepper-spray in prisons

118. The Corrections Amendment Regulations 2017 enable prison directors to issue pepper-spray to trained officers. Officers must undergo a four-hour training, annual refresher training and recertification course, as part of their Tactical Options training. They must be trained in first aid, control and restraint, and the use of On-Body-Cameras. Cameras must be switched on when pepper-spray is drawn.

The initial training covers:

- techniques for use and distance control
- situational awareness and threat assessment
- aftercare and reassurance
- equipment retention and self-protection.

119. Officers are taught de-escalation techniques during their Tactical Options training. Pepper-spray may only be used if deemed necessary, and proportionate. Manager, prison director and Incident Line must be notified if pepper-spray was drawn. All incidents involving use are subject to review.

120. From its introduction in July 2017, to December 2018, there were 355 incidents (in 17 prisons), of which:

- 64% involved drawing
- 36% involved use.

121. As of 4 December 2018, there were no complaints.

16. Training to identify and deal with torture victims

Judges

122. To guarantee the independence of the judiciary, training and resources are provided by the Institute of Judicial Studies, the professional development arm of the judiciary. The Institute's curriculum includes domestic human rights legislation and international human rights instruments.

123. Members of the Immigration and Protection Tribunal, which hears appeals on immigration decisions, are trained in the Refugee Convention and other relevant conventions.

Prosecutors

124. Crown prosecutors do not receive specific training relating to the Convention or on detecting torture.

125. The Police Prosecution Service does not deliver any training programmes for its prosecutors on detecting and documenting torture. However, training includes the Crimes of Torture Act (enshrining our obligations under the Convention and the Optional Protocol).

Refugee personnel

126. The health providers at Mangere Refugee Resettlement Centre prepare Istanbul Protocol reports. A handbook assists health professionals to provide services to refugees. It includes a section on torture and trauma experiences, and how trauma experiences may affect a consultation with a refugee. The handbook gives advice on how to respond when a client discloses torture, and how to explore whether they wish to be referred for counselling. The handbook references the Istanbul Protocol and refers health professionals to the OHCHR website. Immigration officers receive training about the handling of sensitive claims including victims of trauma, and gender sensitive issues. UNHCR's office in Canberra has provided training on mental health issues.

127. The Ministry of Health-funded Cultural and Linguistic Diversity eCALD.com-programme offers training and resources for health professionals working with refugee and migrant communities, including a resource on medically assessing refugees who may be victims of torture. The courses use cross-cultural models to enhance engagement, trust and culturally appropriate approaches. The course content includes the impact of torture on the health of refugee clients, how to manage history-taking, and how trauma may impact on consultations.

Mental health personnel

128. Guidelines for the Mental Health Act and a range of material is available to clinicians and administrators. Mandatory training includes restraint use, standards, reporting, monitoring, and review. Similar guidelines are available for Intellectual Disability (Compulsory Care and Rehabilitation) Act and the Substance Addiction (Compulsory Assessment and Treatment) Act.

Article 11

17. Interrogation and custody rules

Prisons

129. As authorised under the Corrections Act 2004, instructions for the operation of prisons are detailed in the Prison Operations Manual and Custodial Practice Manual.

130. Relevant sections are reviewed as required, for example when:

- legislation changes
- recommendations following reviews and investigations are approved
- new initiatives are implemented.

131. Parliament is considering amendments to the Corrections Act. Specific proposals are discussed under the relevant sections of this report. The Act does not provide for powers of interrogation. Interrogation tactics are never used.

132. A new shift pattern for staff being developed intends to increase unlock hours. The recently opened redevelopment of Auckland Prison also allows for more unlock time through modernised infrastructure and provides more space for programmes.

133. Privately managed prisons must comply with the same laws relating to prisoner welfare, management, and human rights standards. Safeguards to ensure this are in place.

Public Protection Orders

131. Public protection orders can be imposed by the High Court if a person who has completed a finite prison sentence continues to pose a very high risk of imminent and serious sexual or violent offending. Public protection orders are served at a civil residence. Residents are entitled to as much autonomy and quality of life as possible, while ensuring the orderly functioning and safety within the residence. Orders are reviewed annually by a panel appointed by the Minister of Justice and every five years by the High Court. Three people are currently subject to public protection orders

Police

134. Police operate under legislation and judicial guides for interviewing persons and custody. NZBORA and the Practice Note on Police Questioning issued by the Chief Justice of the High Court specify the rights of individuals while being questioned by Police.

135. Detailed Police Instructions, available to all officers, cover interviewing and custodial management, and give effect to legal requirements. The Instructions are regularly updated and reviewed every few years. They contain specific information on dealing with persons with different needs, such as witnesses requiring special consideration, children or prisoners. Failure to follow the Instructions may result in an employment misconduct inquiry. All staff are subject to a Code of Conduct that specifies that they should speak to any person in a professional, respectful way, with integrity. Police provides training and reminders to all staff about the Code.

136. There are legal protections for people questioned by Police, including NZBORA and the Evidence Act excluding statements influenced by oppression from being used.

137. When interviewing young persons, police must comply with the strict requirements of the Oranga Tamariki Act. This includes informing parents before commencing the interview, and conducting interviews in the presence of an adult nominated by the youth or a lawyer.

138. The Chief Justice's Practice Note reiterates the importance of informing a person in custody of their rights and favours video recording of all statements in custody.

18. Places of detention

Prisons

Current situation

139. Between 2014 and 2018, the prison population has grown by over 2,000, peaking at 10,820 in March 2018. The female prison population has grown from 533 to a peak of over 800. The overall population increased by approximately 8%. Since March 2018, the prison population has declined (total 9,785, female 678 on 31 December). Māori are disproportionally represented.

140. Reasons for the increase are complex. Factors include higher proportion of repeat offenders and increases in violent offending, along with recent changes to bail laws.

Prison occupancy

As at 30/9	Muster	Capacity	Occupancy Rate
2014	8703	*	*
2015	9061	*	*
2016	9810	10240	96%
2017	10470	10728	98%
2018	10052	10652	94%

* not available

Percentage of remand prisoners

As at 30/9	Remand
2015	24%
2016	28%
2017	29%
2018	29%

Average time on remand

	Days
2014/15	58
2015/16	62
2016/17	65
2017/18	70

Detailed data is available in Appendices 4-5.

Reform of the criminal justice system – 'Hāpaitia te Oranga Tangata'

141. In 2018, the Government commenced a comprehensive and ambitious programme of reforming the criminal justice system. It looks at addressing the disproportionate representation of Māori and reducing the prison population. The goal is to reduce the prison population by 30% in the next 15 years. Hāpaitia aims at more effective responses to crime, reducing harm, and keeping people safe.

142. The Government is collaborating with Māori and communities to develop tailored solutions. To enhance input from Māori across all portfolios, the Government established, in 2018, a new agency for Māori/Crown relations - Te Arawhiti (the bridge). The Government is investing in improving social outcomes, for example addressing socioeconomic disadvantages experienced by children which will have long-term benefits for Māori children.

Steps to reduce the prison population

143. Additional rehabilitation and re-integration programmes in prisons and the community have been made available since the previous report, including:

- intensive alcohol and other drug (AOD) treatment programmes based on Māori principles, designed for women and young people (122 places yearly)
- an Aftercare Worker Service helping people who have completed an intensive AOD treatment programme transition into the community (1,156 for 2018/19)
- 13 additional residential beds in AOD community treatment facilities available to individuals on community-based sentences (38 yearly)
- 'Whare', a cross-agency, culturally responsive programme supporting, in prison and community, men under 25 convicted of offences like theft, burglary and robbery (144 yearly)
- 'Kia Rite', an information and skills training programme for women (300 for 2018/19).

144. In 2017/18, the Government introduced the High Impact Innovation Programme, a cross-agency operational response to the rising prison population. The initiatives generated a prison bed saving of at least 64,000 days, equating to a reduction of 175 in the prison population. Initiatives include:

- an electronically-monitored bail initiative
- enhanced bail support services
- reducing remand times through triaging cases
- finding appropriate accommodation for people eligible for home detention
- mores community reintegration and rehabilitation programmes to help prisoners gain parole.

145. In 2018, the Government provided $57.6m for additional supported accommodation for people on bail and parole. Approximately 1,100 supported accommodation places are now available annually, compared to 368 places in 2015.

Māori in the prison system

146. Māori comprise over 50% of prisoners, while only constituting 15% of the population. This pattern is more pronounced in the female prison and youth populations (18-25 years) - both 60% Māori).

147. In 2017, the Waitangi Tribunal' report, *Tū mai te Rangi! The Report on the Crown and Disproportionate Reoffending Rates*, found the Government:

- has a duty under the Treaty of Waitangi to reduce inequities between Māori and non-Māori re-offending rates
- was not sufficiently prioritising reduction of Māori re-offending and thus in breach of the Treaty principle of active protection
- had not breached the principle of partnership because of "good faith attempts to engage with Māori", but risked breaching it if it did not fulfil its stated commitment to develop these partnerships".

148. Steps taken to implement the six recommendations from the report include:

- changing the 'Māori Advisory Board' to the 'Māori Leadership Board' and revising the terms of reference to have greater influence over decision making and form a more balanced partnership arrangement
- the Māori Leadership Board and Department of Corrections ('Corrections') officials working in consultation with Māori on a new Māori strategy – including measurable targets
- significant resourcing for Māori-specific programmes and staff including:
    - the programmes listed in paragraph 150
    - staff with a specific Māori focus, including new leadership roles, a Māori Strategy and Partnerships Team, and a new Cultural Capability team, to supplement the existing Māori Services team
    - a range of programmes and projects with Māori groups
- training on the Treaty of Waitangi and the Māori perspective to senior staff.

149. Specific partnership projects include:

- the 2017 Corrections and the Kingitanga (Māori King movement) agreement to collaborate to improve the health and well-being of Māori in custody, rehabilitation and reintegration, and Māori re-offending rates. A women's resettlement centre, is planned on land provided by Māori in conjunction with social and housing services
- the 2018 agreement with Ngāti Kahungunu Iwi Incorporated designed to improve the wellbeing of Māori, and their families, who have contact with the criminal justice system. Initial areas of focus are work and training; a community-based reintegration centre for women; and exploring a comprehensive Māori reintegration/rehabilitation pathway.

150. Corrections delivers a range of programmes responsive to the needs of Māori including:

- a 'Tikanga Māori' culturally-responsive motivational programme (1,040 places for 2018/19)
- 'Mauri Tū Pae', an offence-focused programme to reduce reoffending, delivered in the five Te Tirohanga (Māori'-focus) units (236 places yearly)
- 'Whare Oranga Ake', a re-integration programme housing minimum-security people nearing release outside prison in open self-care accommodation (40 beds)
- Short Rehabilitation Programmes for women and men, responsive particularly for Māori (52 yearly for women, 292 for men)
- a Medium Intensity Rehabilitation Programme delivered across all men's prisons, designed to be particularly responsive for Māori men (456 yearly)
- 'Kowhiritanga', an offence focused rehabilitation programme delivered at all three women's prisons, designed particularly for Māori women (140 yearly).

Alternatives to imprisonment

151. Five community sentences are available as non-custodial alternatives to imprisonment. Details were provided in detail in the 6th report (paragraph 181). The court can also impose a sentence of reparation or a fine.

152. At any given time, most of the people in the justice system are managed in the community on one or more of these sentences. As at 31 December 2018, 30,158 were managed by Corrections in the community and 9,785 people were managed in prison.

Types of sentences

As at 30/9	Total Sentences	Total non-custodial	Home Detention	Community Detention	Intensive Supervision	Supervision	Community Work	Custodial
2015	29,115	21,867	1,603	582	2,659	7,306	9,717	7,248
2016	29,553	21,930	1,651	492	2,812	7,905	9,070	7,623
2017	30,199	22,249	1,671	472	3,241	8,101	8,764	7,950
2018	29,913	22,373	1,717	452	3,832	8,030	8,342	7,540

Numbers reflect the primary sentences of persons, not total sentences

The prison network

153. Since 2014, the Government has delivered 986 new beds through double-bunking (138 of which are 'Emergency Beds'), and 59 beds through small-scale new builds. In 2015, a $300m development of Auckland Prison was opened with a capacity of 960.

154. In 2019, over 1,200 beds will be delivered through modular accommodation units (976 beds), double-bunking, and new builds. The Government will also build, by mid-2022, a modern 600-bed facility at Waikeria Prison including a 100-bed mental health facility. This will eventually allow the closure of over 400 sub-optimal beds, and increase the network's effectiveness and resilience.

155. Due to the rising prison population, the system is under pressure and double-bunking is necessary. Civil society raised concerns about overcrowded conditions in prisons. The reforms of the criminal justice system aim to reduce overcrowding.

Cells shared

	Number of shared cells
30/06/2015	1424
30/06/2016	1693
30/06/2017	2094
30/06/2018	2182

Health care in prison

156. The Government recognises the need for health services, including mental health in prisons. 91% of prisoners have a lifetime diagnosis of mental health or substance abuse disorder. 19% of prisoners have previously attempted suicides.

157. Corrections employs approximately 300 nurses to provide primary health care service and contracts with doctors and other health professionals. In 16 prisons, mental health clinicians deliver primary mental health care. In the two remaining prisons, mental health nurses deliver care. Health agencies, working closely with Corrections, provide secondary and inpatient mental health services to people in prison, including:

- assessing mental health through a screening tool designed by forensic mental health services
- management plans for people requiring forensic mental health servicess
- assessing people referred under the Mental Health (Compulsory Assessment and Treatment) Act.

158. In 2017, Corrections developed a strategy to improve mental health services for prisoners. Corrections has since invested $25m to pilot new services and supports for those vulnerable to self-harm or suicide.

159. Of this funding, $14m has been allocated to:

- contracted clinicians, counsellors and social workers
- services for people with complex needs transitioning back into the community
- services for families of people in prison or on community-based sentences.

160. A Corrections is also introducing new, more therapeutic model of care for prisoners who are vulnerable to self-harm or suicide. We are spending $11m on this project over four years.

161. In 2018, a new facility was opened at Auckland Prison, which includes a mental health treatment unit (detail para.194) and as discussed a 100-bed facility in Waikeria will be built.

162. The Government's 2018 Inquiry into Mental Health and Addiction Services (para. 262) included consideration of prisoners' mental health needs, particularly young people's.

Strip-searching in prison

163. Corrections must search people in prison:

- on admission
- on return after being temporarily removed in some cases
- when initially segregated due to risk of self-harm
- on return of at-risk persons into segregation
- on arrival of transfers.

164. Strip-searching is also permitted if an officer reasonably believes a person possesses an unauthorised item, and it is necessary to detect it.

165. Corrections can also conduct searches of fully clothed people in prisons, staff and visitors through 'scanner search' or 'rub-down'.

166. In 2018, the High Court awarded $1,000 in compensation for a breach of NZBORA through unreasonable strip-search (see para 18). In 2017, the High Court also declared the strip-search at a women's prison in 2010 violated NZBORA.

167. Parliament is considering amending legislation which would reduce the need for strip-searching by

- allowing, subject to privacy protections, imaging technology
- introducing a new individualised approach for at-risk prisoners.

Detention in Police facilities

168. The total number of Police detainees has grown continuously between 2014 and 2017 except for persons under 18 (for example for adult males from 105,638 to 131,171) (detailed data in Appendix 3). This covers all persons arrested or detained in a Police custodial facility. Data on capacity and occupancy rates is not available

but Police are considering an audit. Data will be collected on detention in facilities where detainees may be held overnight.

169. Prisoners remanded may spend up to a week in Police custody but this period can be extended under specific circumstances. Only 29 Police custodial facilities designated as Police Jails (under the Corrections Act) are used to hold prisoners on a temporary basis for remand or after sentencing. Police work with Corrections to manage prisoner numbers.

170. Police cells are not designed for sentenced prisoners or other long custodial stays. Over the last 10 years, there were several phases of a national cell remediation programme which has addressed the state of repair, design issues and particularly, suicide prevention measures in Police cells. The IPCA and Police are conducting a national, joint assessment of the conditions of cells.

Material state of Court cells

171. Following an IPCA investigation (para 241) into a suicide in 2015, the Government is conducting a significant investment programme across all court cell facilities. All 481 cells were checked against a standard agreed with Police which includes removing all possible ligature points and adding privacy screens. As recommended by the responsible NPM, CCTV will be installed in every cell while complying with the Privacy Commissioner's guidelines. CCTV supports the safety of staff and prisoners including those at risk of self-harm. It is expected that the upgrade work will be completed in 2019.

172. A small number of cells were gazetted as prison facilities to cope with prisoner overflow. This means prisoners could be accommodated for longer periods.

Defence Force facilities

173. The corrective cell facilities within Devonport Naval Base, on HMNZS PHILOMEL, were closed. A temporary arrangement is in place within Devonport Base using a barrack room until a new purpose-built facility can be delivered.

174. In the reporting period, the Defence Force Services Corrective Establishment (SCE) has only been used for disciplinary penalties. SCE ensures there is never overcrowding.

175. The health of personnel detained at SCE is monitored by weekly Medical Officer visits. Unwell detainees are treated, and for persons detained for more than a week a Multi-Disciplinary-Team puts a care plan in place. All detainees are visited weekly by a Visiting Officer who deals with any complaints.

176. In each of the last two financial years, approximately 15 officers were detained at SCE. The duration ranged from 5-28 days except for two cases of 112 and 150 days. Detailed data is in Appendix 6.

177. There have not been any deaths in Defence detention facilities in the last 20 years. No complaints were received from any detainees during the reporting period. The SCE is monitored by the NPM through no-notice inspections. The 2017 OPCAT report found no concerns.

19. Solitary confinement

Human Rights Commission review of seclusion and restraint

178. A 2017 independent review commissioned by the Human Rights Commission, 'Thinking Outside the Box: A review of seclusion and restraint practices in New Zealand' by Dr Shalev, highlighted issues regarding the use of restrictive practices across many settings. A 2017 Chief Ombudsman report raised issues about prisoner management in At-Risk-Units. Both reports are based on findings in 2016.

Health facilities

179. The Ministry of Health has accepted all of Dr Shalev's recommendations. It is known that restrictive practices can compromise therapy and trigger trauma. They can inhibit human rights and do not align with evidence-based high-quality care.

180. Seclusion is authorised under the Mental Health Act and the Intellectual Disability Act (but not under the Substance Addiction Act). Under these Acts, seclusion is only used when no other safe and effective intervention is possible. The Mental Health Act states the basic rule that 'every patient is entitled to the company of others'. For details on the Acts see paragraph 266.

181. In 2018, 'Zero seclusion: Towards eliminating seclusion by 2020' was launched. This national project uses quality improvement methodologies and takes a co-design approach with service providers and users and their families. It will support service providers to use evidence-based practices to safely reduce and eliminate seclusion.

182. Zero Seclusion builds on the efforts under the Mental Health and Addiction Service Development Plan 2012–2017 and the 2010 Seclusion and Restraint Guidelines. To assist with the goal of reduction and eventual elimination, the National Workforce Centre for Mental Health, Addiction and Disability (Te Pou) is funded to develop information, guidance and training to reduce and prevent restrictive practices. Dr Shalev identified seclusion reduction initiatives promoted by Te Pou as excellent practice.

183. A national training programme Safe Practice Effective Communication (SPEC) was launched in 2016 to provide national consistency and best quality, evidence-based therapeutic interventions to reduce restraint and seclusion in inpatient mental health units and intellectual disability secure forensic services.

184. Intended SPEC outcomes include:

- national training programme
- national governance including Māori representation
- focus on therapeutic interventions
- elimination of flexion based holds
- elimination of risky prone positioning
- elimination of injuries
- improved national oversight of restraint through reporting.

Night Safety Procedures

185. Under 2018 transitional guidance night safety procedures will be eliminated by December 2022. Night safety practices mean that patients are locked in their rooms for safety reasons. They have no therapeutic function and constitute a form of environmental restraint. Current reasons for them include building design, staffing, and the level of risk. The guidelines require that rights of patients and staff are protected.

Mental Health Reports

186. Since 2006, annual statistics on the use of seclusion have been publicly available. They show progress in reducing the use of seclusion in mental health services, including from 2009-2017[1]:

- a 28% decrease of people experiencing seclusion during mental health treatment in an adult inpatient service (1143 to 775)
- a 59% decrease of hours spent in seclusion (77% spend less than 24 hours)

[1] 2017 data is provisional.

- the use of seclusion steadying following a seven-year decline.

Statistics highlight areas of concern. For example:

- between 2014 and 2017, while the number of seclusion hours decreased by 11%, the number of people increased by 5%
- in 2017, 98 people aged 19 years and under were secluded (283 seclusion events)
- in 2017, Māori were 4.5 times more likely to be secluded in an adult inpatient service (41% Māori).

187. Work towards reporting of seclusion for people with intellectual disabilities is progressing. This will allow better understanding of the use of seclusion for each group.

Restraint practices

188. The Ministry of Health supports the reduction in the use of restraint in mental health services. There is no duty to report to the Ministry. The Ministry is developing national reporting to ensure consistency of practice and national oversight.

Disability Action Plan

189. Seclusion and restraint of persons with disabilities is likely to be a focus area in the next Disability Action Plan which is currently being updated.

Prisons

190. Corrections uses segregation where required in accordance with the Corrections Act. This involves denying or restricting prisoners' association with other prisoners to:

- manage risk to safety or good order
- provide protective custody, including at prisoners' request
- assess or ensure prisoners' physical or mental health.

191. Prisoners subject to a direction are not automatically denied all association with other prisoners.

192. Parliament is considering amendments to legislation to introduce a comprehensive legislative framework for the management of prisoners at-risk of self-harm, separate from the segregation regime. Under the proposed framework, all new prisoners must be assessed for risk of self-harm. All at-risk prisoners will have a tailored management plan developed using a multi-disciplinary approach, outlining how Corrections will address their risk including what association they should have with other prisoners.

193. The new model of care (described from para 158) will lead to a reduction in seclusion and restraint. The Ministry of Health is involved in the development of this project. Funding has enabled three pilots, including in a women's prison. Elements of the model have been introduced in all prisons.

194. In its 2014 report, the SPT raised concerns about Auckland Prison management units. As discussed, in 2018 a new purpose-built mental health treatment unit was opened at Auckland Prison for people with complex needs. Prisoners can associate under controlled conditions and access appropriate programmes, exercise yards, and a sensory garden. A specialist multi-disciplinary Intervention and Support team provides on-site treatment and support. The SPT report also raised hygiene issues with the management units at Mount Eden Corrections Facility, which have been addressed.

195. Corrections is subject to robust oversight from internal and external groups and complaints mechanisms, ensuring segregation and restraint are proportionate and limited.

People in Intervention and Support Units

	Offenders
30/06/2015	86
30/06/2016	127
30/06/2017	110
30/06/2018	101

Note that the number of placements per year would be significantly higher (e.g. over 4,000 placements in 2015/16)

Average time spent in Intervention and Support Units

	Average days
2014/15	7
2015/16	6
2016/17	6
2017/18	7

Use of restraints in prisons

196. Following 2016 inspections at five prisons the Chief Ombudsman (NPM) considered the use of tie-down bed and waist restraints for a small number of prisoners amounted to cruel, inhuman or degrading treatment (Article 16).

197. Measures taken to address concerns include:

- Corrections' policy was amended in 2017 to limit the use of tie-down beds to four prisons, and only where other means of preventing injury and ensuring safety are ineffective
- tie-down beds have not been used since November 2016, and consideration is being given to ceasing the use in prisons altogether

- At-Risk-Units were redeveloped into specialist Intervention and Support Units. A model of care for people vulnerable to self-harm and suicide is being piloted at these units in three prison sites.

198. To maintain public safety, proposed amendments to legislation (see para.131131) will allow the use of restraint for more than 24 hours when prisoners are treated in hospital. Currently, restraint use over 24 hours is not expressly permitted by legislation.

Restraints in Police facilities

199. Police continue to use restraint chairs where necessary. All details are recorded in use-of-force reports and in individuals' records.

20. Minors in detention

200. Youth Courts deal with young persons' serious offending, other than murder and manslaughter. Judges receive special training to deal with young people. Most young people in the Youth Court will be between 14-16 years old, however 12 and 13-year-olds will be included if charged with serious offences.

201. The youth justice age was raised to include 17-year-olds from July 2019. This means the New Zealand definition will align better with international definitions. 17-year-olds will be transferred to adult courts for specified offences but will still by default be detained in youth facilities.

202. The youth justice system aims to hold offenders accountable and encourages them to accept responsibility while keeping them out of the adult criminal system. The system acknowledges their needs and gives them opportunity to develop.

203. The 10-year cross-agency Youth Crime Action Plan was launched in 2013, aiming to reduce offending and re-offending. Alongside, an expert panel review led to a new ministry for children, Oranga Tamariki, in 2017. Oranga Tamariki is implementing new services and support to help keep children out of the adult justice system and respond more effectively to those in the youth justice system (for details see para. 213).

204. Data collection was improved in the reporting period. A new dataset incorporating data from relevant agencies was used to produce the Youth Justice Indicators Summary Report 2018. It provides a better picture of how young people flow through the system. According to the report, the youth justice system is performing well against some key measures. Between 2009/10 and 2016/17:

- offending rates declined by 59% for 10-13-year-olds and by 63% for 14-16-year-olds
- Youth Court appearances rates decreased by 38%.

205. Since 2013/14, there was a significant reduction in sentences:

Children under 17 years given an order in Court

	Total sentences	Adult sentences	Supervision with residence	Supervision with activity, intensive supervision	Supervision, community work	Education, rehabilitation programmes	Monetary, confiscation, disqualification	Discharge, admonish
2013/14	786	60	108	63	153	6	210	183
2014/15	633	33	87	75	114	12	162	150
2015/16	549	33	90	63	99	6	132	129
2016/17	573	39	87	63	105	6	135	135
2017/18	540	33	105	87	90	6	105	114

206. However, data also indicates there is room for improvement, particularly regarding outcomes for Māori and the high use of remand. 75% of persons in youth justice residences are Māori. Government agencies are developing a plan to address issues. Oranga Tamariki is developing new interventions for Māori.

Detention facilities

207. We are trying to ensure that young people in detention are housed in age-appropriate facilities. As reflected in the table, we are moving towards a system supporting young people to stay in the community, including in Māori-operated facilities, instead of placements in large youth justice residences.

208. Young offenders (under 18) are detained in either specific Youth Units in prisons, general adult prisons or in Oranga Tamariki's youth justice residences. Overall, the number of young offenders in prisons has reduced from 60 to 41 between 2014 and 2018.

Youth Units in prisons

209. We have two youth units in adult prisons, dedicated to accommodating young men under 18, although young adults can be detained there in certain circumstances. Young persons (currently defined as 14-16 year-olds) who have been sentenced to imprisonment in the adult jurisdiction will be placed in a prison unless Oranga Tamariki and Corrections agree they should be detained in an Oranga Tamariki youth justice residence. 14 and 15-year-olds being dealt with in the adult jurisdiction must not be detained in a prison pending hearing or sentence, and can be bailed or placed in a youth justice residence. 16-year-olds can only be detained in a prison in certain circumstances.

210. From July 2019, 17-year-olds appearing in the youth or adult jurisdictions may be ordered by a court to be detained in a prison pending hearing or sentence if Oranga Tamariki and Corrections agree this is necessary for safety reasons. There are currently no 14-16 year-olds, and on average 18 17-year-olds, in youth units at one time.

211. Youth units provide a range of age-appropriate programmes and supports. Over the past year, enhanced programmes were introduced, including:

- a Youth Alcohol and Drug programme
- a high-risk youth rehabilitation programme
- education tutors
- youth activities coordinators.

212. Both units hold multi-disciplinary team meetings and the on-site mental health nurse can provide advice and intervention. While youth units generally follow the same procedures as mainstream prisons, there are some differences, including:

- a higher staff-prisoner ratio
- no general separation by security classification during unlock hours
- longer unlock hours
- medical staff coming into the units to provide treatment.

Young people in adult prisons

213. In some cases, 17-year-olds may be held outside of youth units. For males this is usually when they are remanded in custody and need to remain close to their sentencing court. In very rare circumstances, a young person (14-16) may be removed from a youth unit if they present an unmanageable risk to others. As at December 2018, nine male 17-year-olds were remanded in adult prisons.

214. There are no youth units for females given their low numbers. In December 2018, there were three 17-year-old females under Corrections' management. Arrangements are made to separate them, but in most cases prisons will enable mixing with older low-risk prisoners, to avoid isolation.

Youth justice residences

215. Oranga Tamariki's youth justice residences are not prisons. They are designed to provide a supportive environment where young offenders learn life skills and how to manage problems, with the aim of rehabilitation.

216. From July 2019, 17-year-olds will, by default, be detained in youth justice residences. Oranga Tamariki is increasing the availability of community placements as an alternative to secure residences and to support the transition to communities. Since 2017, Oranga Tamariki has developed five community remand home services (capacity 22). Many of the community placements focus on the needs of Māori. It is intended there will be up to 80 community remand beds available in 2019, with development of further underway.

217. From July 2019, remand detention in a youth justice residence will need to be reviewed every 14 days.

Information on all Oranga Tamariki residences

218. Oranga Tamariki manages four youth justice and five care and protection residences with a combined capacity of 200. Care and Protection residences are for children in state care. Oranga Tamariki committed to phasing out the use of residences for care and protection purposes. In youth justice residences young persons are subject to court orders and cannot leave voluntarily. In eight out of nine residences young people can be held in 'secure care' units, separate lockable units containing unlocked bedrooms. In all residences, Māori are overrepresented (75-80% are Māori).

219. In 2017, the Office of the Children's Commissioner found that the secure residences generally met OPCAT standards, although there are many areas for improvement. The Children's Commissioner agrees with Dr Shalev's report that some secure units were inappropriate.

220. Oranga Tamariki is undertaking various projects, based on a child-centred operating model, to transform the experience of young people in residences. The Child-Centred Youth Justice Residences Project will establish residences as therapeutic, rehabilitative environments, and introduce a nationally consistent approach to the care of young offenders. A programme to enhance the physical environment of youth justice residences is being undertaken. National Care Standards Regulations, including a code of rights, will come into force in 2019.

221. The regulatory framework that applies to residences is being reviewed to align with best practice. For youth justice, a model of restorative practice incorporating Māori perspectives will be piloted in one facility. It contributes to supporting young people, whānau and victims of youth crime to uphold 'mana' (the individual's intrinsic value and dignity derived from belonging to a family group).

222. Legislative changes coming into force in July 2019 also require Oranga Tamariki to strengthen its commitment to the Treaty of Waitangi. This includes considering Māori values, setting measurable outcomes to reduce disparities, partnering with Māori, and public reporting on progress.

Segregation

223. Persons in most Oranga Tamariki residences can be placed in secure care. A staff member is always present. No disciplinary practices within residences amount to solitary confinement. Nevertheless, Oranga Tamariki is committed to reducing the use of secure care, and making secure units look and feel less stark.

224. Secure care is different from segregation in prisons since those in secure care can mix with one another between 8am and 8pm unless confinement is necessary due to circumstances such as an emergency.

225. Secure care can only be used to prevent physical harm or absconding. The power to place children in secure care can only be used in limited circumstances prescribed in legislation, and there are extensive reporting requirements. On entering, all young people are made aware of its reasons and purpose to help them with their behaviour. Daily reviews of placements are required. The person can participate in the reviews. Secure care units within Residences are wings with bedrooms and access to communal areas. They are not places of isolation. A young person cannot remain in secure care longer than three consecutive days without prior Court approval.

226. A child or young person placed in secure care may be confined to their own room only for certain purposes such as in case of emergency, and for no longer than is necessary. This high-level intervention is closely monitored. A review of the grounds for confinement must be made frequently, for example every five minutes between 8am and 8pm and usually at least every 30 minutes overnight.

227. Oranga Tamariki is developing alternative approaches to dealing with challenging behaviour. The Care Regulations are reviewed. Induction changes will focus on de-escalation. We acknowledge the high rates and complexity of mental health issues for young people in residences. Access to specialist mental health treatment for young people in residences can be challenging as there is a shortage of services. In 2016 a new 10-bed specialised youth forensic inpatient unit was opened for 13 to 17-year-olds severely affected by mental health issues, who are involved in the youth justice system. The unit incorporates Māori models of care, encourages school attendance and engagement in therapeutic programmes.

Youths in Police custody

228. There are concerns about young persons being in Police cells for extended periods (over 24 hours). The Children's Commissioner (NPM) is of the view that over time the option to remand children to Police cells after the first court appearance should be removed from legislation.

229. We acknowledge that Police cells generally do not meet the needs of young people. However, although holding young people (currently 14 to 16-year-olds) in Police cells is sometimes unavoidable, the Oranga Tamariki Act only permits this in the following circumstances:

- detention for over 24 hours following arrest (prior to first appearance in Youth Court) on joint agreement by Police and Oranga Tamariki, where the young person is likely to abscond or be violent and where suitable facilities for safe custody are not available to Oranga Tamariki

- by Youth Court order, pending hearing, where the young person is likely to abscond or be violent and where suitable facilities for safe custody are not available to Oranga Tamariki

- where the Youth Court has ordered the young person to be placed in the custody of Oranga Tamariki pending hearing, they can be detained for up to 24 hours in Police custody if Police and Oranga Tamariki are satisfied they are likely to abscond or be violent and that suitable facilities for safe custody are not available to Oranga Tamariki

- from July 2019 reviews by the Youth Court of Police detention will be required every 24 hours unless clearly impracticable.

230. When young persons are held in Police cells, this is usually because a suitable place in an Oranga Tamariki facility is unavailable. As explained, efforts were made to increase availability of alternative accommodation. Social workers and Police work closely to find the best solution and minimise the time in Police custody. A Remand Options Investigations Tool is under development.

14-16 year olds held in Police cells over 24 hours

	Number of youths
2012	433
2013	249
2014	180
2015	219
2016	374
2017	313

For data on youths held in Police cells who had some mental health issue, see para. 285.

Young people in mental health units

231. Young people may be detained in a mental health unit for compulsory assessment and treatment if they meet the criteria of the Mental Health Act. Young people who are subject to the Mental Health Act are entitled to the same rights and safeguards as adults (see issues 24-25). Additionally, the assessment of person aged under 17 should be conducted by a specialist child and adolescent psychiatrist. Where practicable, treatment is in a child and youth mental health facility.

Person 17 and under detained for compulsory assessment and treatment in a mental health inpatient unit

	Number of clients
2014	72
2015	55
2016	58
2017	77

Art 37 of the Convention on the Rights of the Child

232. Under Article 37, every child (under 18) deprived of liberty shall be separated from adults unless it is considered in their best interest not to do so. New Zealand has reserved its right not to apply this provision under certain circumstances, such as shortage of places.

233. Facilities generally meet the requirements of Article 37 and efforts are made to ensure young people are separated from adults. However, avoiding age-mixing is not always possible due to limitations of some existing facilities or because it is necessary to avoid isolation of female prisoners.

21. Inter-prisoner violence

234. The 2016/17 OPCAT report notes concerns about levels of violence in prisons.

Serious prisoner-on-prisoner assault

	2013/14	2014/15	2015/16	2016/17	2017/18
Serious prisoner-on-prisoner assaults (requiring overnight hospitalisation)	42	38	45	25	42

235. In 2015, the Chief Inspector of Corrections undertook a major investigation into organised prisoner-on-prisoner violence at Mount Eden Correctional Facility, which at the time was privately run. All 21 recommendations in the report were accepted, including taking appropriate and timely action in response to violent prisoners, and establishing a national gang strategy. Subsequently, the prison has returned to Corrections' management.

236. Corrections has a zero-tolerance policy for violence in prisons. Despite a 7.7% increase in the prison population in 2016/2017, and a 1.9% increase in 2017/2018, rates of violent incidents have been kept relatively static through:

- recruiting 474 officers in 2017/2018 (compared to 197 in 2013/2014)
- increasing the number of prisons with on-site teams trained in dealing with emergencies
- issuing pepper-spray
- launching a five-year Gang Strategy in 2017

237. Since 2014, there were no matters before New Zealand Courts involving inter-prisoner violence where judicial findings of negligence were made against staff.

22. Deaths in custody

Police

Deaths in Police custody

	Gender	Ethnicity
2014	Male	Māori
2015	Male	European
2015	Male	Māori
2015	Male	Māori
2015	Male	European
2017	Female	European
2017	Male	Māori

Note: Causes of death: heart attack (1), intoxication (4), brain haemorrhage caused prior detention (1), suicide (1). Table includes Mr Taitoko and Mr Walters.

Results of investigations

- Criminal charges laid but staff acquitted (1)
- Performance conversations with staff (3)
- No staff fault (2)
- Ongoing (1)

No compensation was paid.

Mr Sentry Taitoko

238. In 2014, 20-year-old Mr Taitoko died in Police custody. He was highly intoxicated. The IPCA report found Mr Taitoko should have been hospitalised or an ambulance called. Risk assessment and monitoring were inadequate.

239. IPCA made recommendations, including on training, risk assessments and cross-agency work. Police accepted the findings and apologised to Mr Taitoko's family. Police introduced new training and are actively engaging with medical emergency services to better address the needs of dangerously intoxicated persons. Restraint chairs are placed in the district's units to prevent harm.

240. Performance conversations were held with nine Police staff. No criminal charges were laid.

Mr Dwayne Walters' suicide

241. IPCA investigated the 2015 suicide of Dwayne Walters in a District Court cell. Mr Walters was awaiting transfer to a prison. IPCA found the cell condition, in particular ligature points, were a significant contributing factor.

242. The work programme to remedy issues with court cells to prevent further suicides is described at paragraph 171. Police continuously assesses its procedures to ensure best practice is used to identify at-risk persons.

Prisons

243. Since July 2013, there were 30 unnatural deaths in prisons. In the year 2017/18, seven were deemed to be unnatural. Detailed data is in Appendix 7.

244. Suspected unnatural deaths are referred to the Coroner for independent investigation and determination. Additionally, Inspectors of Corrections investigate all death-in-custody events in prisons. Where issues are identified, the Office of the Inspectorate makes recommendations to Corrections. Its report is submitted as evidence at Coroner inquests.

245. Corrections' recently established External Quality Assurance team tracks, and responds to, all recommendations by the Inspectorate and Coroner.

246. Since 2014, the Coroner has made eight death-in-custody reports, with a diverse range of findings. These range from recommending amended policies for at-risk people to staff training in suicide risk assessment.

247. Corrections' primary response has been to improve the management of people at-risk of self-harm and suicide through operational changes and specialist Intervention and Support Units (see para.192).

248. Compensation was paid to relatives in two of the cases falling within the reporting period.

Health places of detention

249. In 2017, seven persons died of causes other than natural or medical (of which three were undetermined) while the person was in an inpatient unit subject to an inpatient order under the Mental Health Act. For some of these cases, an inquiry is still ongoing. Detailed data is in Appendix 8. Due to privacy concerns, certain information is withheld.

250. Under the Mental Health Act, any death must be reported within 14 days. The Director of Mental Health must also be informed of any investigations. These deaths are also subject to coronial inquiry. Any

recommendations outlined in a review or coronial inquiry are referred to the District Health Board for implementation. Due to restrictions in the Coroners' Act, the inquiry outcomes are withheld. As a matter of course, District Health Boards also investigate serious events, such as deaths in custody. Due to the privacy concerns, details are withheld.

251. To prevent suicide in mental health units, the Ministry has issued specific guidelines on observation during seclusion and general policies on observation based on a risk assessment.

252. Provisional coronial data for suicides in aged care facilities was released in 2018 following the request for official information by a member of the public. The provisional number of suicides was 0 in 2015, 4 in 2016 and 5 in 2017. This data included active cases which were, at the time, suspected suicides pending the Coroner's final finding.

253. In 2018, following a family member's complaint, the Health and Disability Commissioner found a private dementia unit service provider breached the Code of Consumers' Rights. In 2014, a dementia patient was assaulted by another patient and died.

254. No compensation was paid by the Ministry of Health following a death in custody. Data on criminal or disciplinary proceeding does not need to be reported to the Ministry and it is not aware of any.

23. Asylum seekers' detention

255. The majority of asylum seekers live in the community, on a visa. Asylum claimants or undocumented passengers who were refused entry can be detained in a low security open immigration facility (MRRC) or in prison.

256. A very small number of asylum seekers are detained in New Zealand. Whether and at what level detention is necessary is based on trained Immigration staff's case-by-case assessment which must have regard to the Refugee Convention. Considerations include:

- flight risk
- identity issues
- criminality
- public safety
- public interest.

257. Applications concerning detained asylum seekers are formally prioritised. Detained asylum claimants or turnaround cases have a right to legal representation and habeas corpus. Detention can be for up to 96 hours without a Warrant of Commitment. All detention beyond 96 hours is pursuant to a judge's Warrant of Commitment, and renewed every 28 days. Immigration officers regularly review detention decisions. If a person is recognised as refugee or protected person, detention ends immediately.

MRRC

258. MRRC accommodates up to 28 persons under "administrative" immigration detention, accommodated separately from quota refugees. On 19 July 2018, six adult male asylum claimants from Afghanistan and Sri Lanka were accommodated under warrants detained there, the total from 2014 to 2018 is 33 persons.

259. Individuals must reside at the facility and are subject to conditions including needing to be granted permission to leave and return at stipulated times. Due to the administrative nature of this custody, powers associated with detention are more limited than in prisons. Physical force may only be used under narrow circumstances (e.g. to prevent a person causing harm). There are reporting requirements where force is used. Body-searching is prohibited, as is searching residents' rooms. If residents do not comply with MRCC rules and warrant conditions, the warrant can be reviewed by a court. The warrant's variation can provide for detention in prison.

Detention in prisons

260. If a Warrant of Commitment is granted, persons who are liable for deportation or turnaround are generally detained under remand-like conditions in a prison (as opposed to more stringent conditions for sentenced prisoners).

261. INZ and Corrections work closely together on a case-by-case basis to provide the best possible detention outcome for detainees. Corrections staff are informed that immigration detainees are not facing criminal charges.

Asylum claimants detained in prisons

2014	2015	2016	2017	2018	
5	15	23	26	12	**81**

24. Non-consensual commitment on health grounds, including intellectual disability

262. In 2018, the Government initiated an Inquiry into Mental Health and Addiction to identify how to better meet needs and improve the system.

263. The report *He Ara Oranga* released in December confirmed that the system is under pressure and highlighted inequalities. The recommendations will help to set a clear direction over the next years. Recommendations include expanding access to, and choice of, services. The report also recommends replacing the Mental Health (Compulsory Assessment and Treatment) Act 1992 (Mental Health Act) to "reflect a human rights–based approach, promote supported decision-making, and provide measures to minimise compulsory treatment." The Government will formally respond in March 2019.

264. Police will encounter people in the community who suffer from some sort of mental disorder. Police will charge a person if, prima facie, mens rea (guilty) mind exists. If a person is charged, they have the right to be represented by a lawyer. Free duty lawyers can provide advice and representation on the first day in court, after which a person may be eligible for legal aid.

265. There have been calls for a broad reform of the mental capacity law and practice with concerns including gaps in the legal framework and shortcomings of safeguards.

266. The different bases for detaining people in our health system, including those with intellectual disabilities, and safeguards, are discussed below. In addition to safeguards discussed below, the Health and Disability Commissioner is available to all users of health and disability services and operates a free advocacy service supporting people having issues with providers.

Mental Health Act and Substance Addiction (Compulsory Assessment and Treatment) Act 2017 (Substance Addiction Act)

267. The Mental Health Act provides for compulsory psychiatric assessment and treatment. The Substance Addiction Act provides for the compulsory assessment and treatment of people considered to have severe substance addictions and lack capacity to decide on treatment. The Substance Addiction Act is used as a last resort. It aims to balance the rights of a person to make decisions against the need to treat their addiction, and protect them from serious harm. Specific threshold criteria (clinical and legal) must be met

268. Free District Inspector services are available under both Acts to ensure consumer rights are upheld (see para. 316). The Mental Health Act allows a person to request a review of their condition by a judge during the initial one-month compulsory assessment process. Everyone subject to compulsory treatment has a 'responsible clinician' assigned to them who must formally review a person's condition every six months. The clinician must advise the person, and people concerned with their welfare, of the review's legal consequences, and their right to apply to the Mental Health Review Tribunal for review.

269. Any assessment or treatment beyond the initial period may occur only with a judge's agreement. They must examine the person within 14 days, consult with two health professionals, and hold a hearing to decide an order and its terms. The person is entitled to a lawyer and to obtain independent psychiatric advice. The judge can make a community treatment (default) or an inpatient order.

270. The Substance Addiction Act allows a patient to nominate any adult to protect their interests, consult an approved specialist for a second opinion and request a lawyer.

Inpatient treatment orders under the Mental Health Act

	Number of inpatient treatment orders (s30)	**Average number of patients under s30 on a given day**	**Number of patients per 100,000 on a given day**
2014	1,784	619	14
2015	1,791	654	14
2016	1,722	589	12
2017 (provisional)	1,690	651	13

Notes: Table does not include patients entering the system through the Courts or prisons or are detained based on a court order because they pose a danger to others. Those patients are treated at one of five forensic psychiatry services.

Data for the Substance Addiction Act is not yet available.

In 2017, Māori were 3.4 times more likely to be subject to an inpatient treatment than other ethnic groups.

Occupancy rates of mental health units

271. Concerns have been raised, including by the NPM and the Auditor-General, about high occupancy rates in some mental health inpatient units. The factors contributing to high occupancy rates are complex, and include capacity, demand, and models of care. National data below does not reflect the high occupancy rates in some regions.

Occupancy rates for mental health inpatient units:

	Occupancy Rate
2014/15	90%
2015/16	91%
2016/17	90%
2017/18	90%

Note: Not everyone is receiving treatment on a compulsory basis

Alternative treatments

272. Most people access mental health and addiction services voluntarily. In 2017, of the 176,310 people who engaged with those services, 5.8% were subject to Mental Health Act orders (provisional data).

273. Most people subject to compulsory treatment under the Mental Health Act access treatment in the community (87% in 2017). The responsible clinician can convert an inpatient order to a community order or grant leave for up to three months. On any day in 2017, on average 4,259 people were subject to community treatment order and 165 people on temporary leave. Under the Substance Addictions Act, the clinician may permit the patient to be absent from a treatment centre for any period.

274. Mentally ill offenders detained in a forensic mental health service may be eligible for community leave. This is typically used to attend appointments, work, rehabilitation programmes or visit family. After increasing periods of successful unescorted leave, some individuals can progress to a less secure setting. Individuals may move to an open hospital unit and eventually reside in the community, supported accommodation or with family.

Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003

275. This Act allows for compulsory care orders to provide care and rehabilitation for persons with intellectual disabilities who are charged with, or convicted of, an offence. Like the Mental Health Act and the Substance Addiction Act, this Act has safeguards upholding individuals' rights. District Inspectors perform similar functions, including:

- inspecting facilities, including documentation processes
- handling complaints and referrals to the Health and Disabilities Commissioner
- inquiries and investigations.

In addition, care recipients are subject to a six-monthly review by qualified psychologists. Individual can appeal orders or seek a second opinion about use of medication whilst under compulsory care. At the end of 2017 there were 123 individuals under the Act.

Protection of Personal and Property Rights Act 1988 (PPPR Act)

276. The PPPR Act assists with decision-making when adults lack mental capacity. It does this via tools such as court orders (personal, property or welfare guardianship), and enduring powers of attorney (EPOAs). Personal orders can be made for a person to enter a specific institution, or requiring certain living arrangements. This does not include psychiatric hospitals or licensed institutions under mental health legislation but can include private hospitals and rest homes. Orders can include the use of reasonable force, for example for medical treatment.

277. There is no national data on how many orders are made under this Act for people to live in rest homes or other specified living arrangements. To give some indication between 2013 and 2017, around 127 personal orders were made per year. However, the number of orders in force will be different and not all of these will be for living arrangements.

278. Orders must be reviewed by a court at least every five years. There can be delays with accessing the court, for example due to priority matters involving children. The person subjected to an order has independent legal representation in proceedings. They can seek a review at any time, as can other persons such as family members.

7(4) Code of Health and Disability Services Consumers' Rights

279. Right 7(4) provides an exception to the general requirement for informed choice and consent. It provides a legal ground to detain people lacking capacity to consent to treatment in secure dementia facilities and rest homes, where a court-ordered legal authority is not in place but treatment is in their best interest.

280. Data on the number of people detained under right 7(4) is not collected. However, based on a report published by the Human Rights Commission in 2018, it is estimated that for a third of people lacking mental capacity in secure aged care facilities, there may be no authorisation beyond right 7(4). The legal limits of right 7(4) are unclear and it does not offer the same safeguards as other legal authorities for detention. HDC is working on recommendations to the Government relating to right 7(4).

281. As of July 2018, 4,749 dementia beds and 1,025 psychogeriatric places were available.'

Short-term detention of persons with acute mental health issues in Police cells

282. Police is often the first service called to assist someone in mental crisis, for which Police does not have appropriate training and facilities. Police has prepared guidance for officers on how to act when an incident involves a person with a mental impairment. Police's primary concern is harm prevention.

283. Concerns were raised about individuals being held in Police custody awaiting a psychiatric assessment. While, mostly, Police cells are inappropriate these individuals, sometimes this is necessary due to immediate health or safety concerns. Police's role is to hold them until a psychiatric assessment by a health service provider.

284. Over the past five years, significant efforts were made to reduce numbers. Police has worked with the Ministry of Health and mental health services to develop an alternative response to situations requiring some form of detention pending psychiatric assessment. In situations where the immediate security of detaining a person is not required Police is now transporting individuals needing assessment to the hospital, and staying with them until they are assessed by a mental health practitioner. Calls for Police assistance at a mental health event are now triaged by mental health practitioners assessing what service is needed and diverting to Police or ambulance as appropriate.

285. The proportion of mental health cases transported to a Police station (as opposed to health facilities) decreased from 15% to 11% from 2014 to 2016. The proportion of attempted suicide cases (or threats) transported to police stations has decreased from 20% to 12%.

Individuals with a mental health event held in Police cells

	Adults (17 or older)		Youth (16 or younger)	
	Number	**Average hours**	**Number**	**Average hours**
2012/2013	4,750	03:52	437	03:34
2013/2014	4,413	03:31	350	03:17
2014/2015	4,143	03:15	296	02:51
2015/2016	2,629	03:29	164	03:36
2016/2017	2,248	03:45	145	04:02
2017/2018	1,826	03:49	170	03:21

Note: Youths in detention are discussed further under issue 20.

Articles 12-13

25. Complaints, investigations, proceedings

286. No prosecutions for torture were laid in the reporting period.

287. Comprehensive, national data on complaints and investigations of detainees' ill-treatment is not available. This is because there are a number of different complaints mechanisms and complaints are not always categorised as relating to ill-treatment in detention. The information provided here, therefore, may not cover all complaints. For complaints mechanisms see issue 26.

Complaints of excess force or ill-treatment in Police custody

	Excess Force	Ill-treatment	Excess Force & Ill-treatment	Total
2013/2014	8	5	1	14
2014/2015	9	4		13
2015/2016	6	1		7
2016/2017	4	2		6
2017/2018				
Total	27	12	1	40

Health places of detention

288. The Ministry of Health does not collect data on all complaints of torture or ill-treatment in health facilities. Data is available on complaints to the Health and Disability Commissioner (HDC). HDC is the independent 'watchdog' investigating complaints and making recommendations to health and disability service providers. HDC publishes annual reports. It its 2017/18 report, HDC notes that as a consequence of actions taken on complaints, wide-reaching recommendations were made across for improvements to health and disability services.

289. In 2016/17, HDC received 2211 complaints (compared with 1958 complaints in 2015/16 and 1880 in 2014/15). These cover a wide range of issues, some of which are relevant to the Convention. 80 formal investigations were completed, of which 61 resulted in breach opinions. 11 providers were referred to the Director of Proceedings responsible for bringing cases to the Health Practitioners Disciplinary Tribunal or the Human Rights Review Tribunal.

290. Complaints to HDC relating to mental health inpatient units:

- 2015/2016: 69
- 2016/2017: 85
- 2017/2018: 87

291. In 2014/15, in his function as NPM and following 18 formal inspections in health facilities, the Ombudsman made 35 recommendations of which 34 were accepted. Areas for improvement were occupancy rates, restraint training and seclusion rooms used as long-term bedrooms. The Ombudsman publishes inspection reports.

Prisons

292. In the reporting period, no New Zealand Court found a breach of s9 NZBORA (torture and cruel treatment). A breach of s23(5) (treatment without humanity and dignity) was found (see para.18).

293. The majority of breaches of ss9 and 23(5) claimed by prisoners are unsuccessful when they reach court as they do not reach the threshold for, or do not involve allegations of, ill-treatment.

294. Following individual communications in 2014, the Human Rights Committee found in 2018 that the preventive detention of Messrs Miller and Carroll amounted to arbitrary detention breaching ICCPR due to its length, and failure to appropriately adjust conditions. The Committee called for a review of legislation. New Zealand has lodged a response with the Committee.

295. For Mr Vogel's communication and compensation payments see issue 29.

Oranga Tamariki–Ministry for Children

Complaints to residences' grievance panels 2014 - 2017

	Allegations		Resolution process	
	Justified	**Unjustified**	**Formal**	**Informal**
Youth justice residences				
Physical abuse	10	5	14	1
Verbal abuse	30	4	22	12
Other*	131	13	45	99
	171 (89%)	***22 (11%)***	***81 (42%)***	***112 (58%)***
Care and Protection residences				
Physical abuse	9	9	6	12
Verbal abuse	23	5	1	28
Other*	120	17	3	134
	152 (83%)	***31 (17%)***	***10 (5%)***	***174 (95%)***

* Compliance with other policies

296. This table does not include complaints escalated to other bodies such as the Children's Commissioner. In the year to June 2017, 91 grievances (28% of all complaints) were referred to a grievance panel, with 28 found to be justified and 16 escalated to the Children's Commissioner. A complaint may have been justified in the initial investigation, but escalated as the complainant was not satisfied with the outcome.

297. If allegations of abuse are made against a youth justice residence staff member, Police may also decide to investigate.

26. Independent Police Conduct Authority (IPCA); complaints mechanisms; discretion to prosecute

Independence of IPCA

298. IPCA is an independent Crown entity, independent in its day-to-day operations. Legislation states "the Authority must act independently in performing its statutory functions and duties, and exercising its statutory powers".

299. In response to the Committee's previously expressed concerns that the majority of investigations were conducted by Police rather than IPCA, IPCA revised processes. Previously, some complaints were referred back to Police for investigation, and IPCA had no involvement until it reviewed the outcome. That is no longer the case. Revised processes are explained below.

300. If a person deprived of liberty wishes to complain about treatment by Police, there are several ways to complain to IPCA or Police. Information is available online and in all Police stations. Front staff also receive training on dealing with complainants. If a person wishes to complain to Police rather than IPCA, legislation requires the complaint be referred to IPCA within five days.

301. When a complaint is received, IPCA obtains all information from the complainant and Police and determines whether there is an issue that needs being addressed. In making that decision, IPCA considers whether the person has a reasonable grievance (whether an officer may have engaged in misconduct).

302. Where IPCA determines a complaint raises a potential issue, the case is managed through either:

- independent investigation by IPCA, making findings and recommendations
- referral back to Police's Professional Conduct Group for investigation
- resolution through agreed redress to the complainant.

303. An investigation can also be pursued by both IPCA and Police with Police focussing on the disciplinary perspective.

304. When matters are referred back to Police, IPCA maintains close liaison with the investigating officer. Issues and timeframes are agreed at the outset. All documentation, including interview statements, are reviewed when available, and any concerns about the direction or scope of investigations are discussed and escalated if necessary. If Police investigations are not conducted in a robust manner, that may result in an independent investigation by IPCA and lead to public scrutiny.

305. IPCA is funded through the Ministry of Justice budget. As discussed under issue 4, IPCA has received increased funding to undertake its functions.

306. IPCA will embark on an intensive programme of inspections of all Police cells where detainees are held overnight ($160,000 of funding received). It is also conducting quarterly audits of Police detention records, to ensure proper management processes are followed, and issues can be raised.

Effective Complaints Mechanisms

307. Complaints of ill-treatment may be received by the responsible agencies or oversight mechanism such as:

- Office of the Inspectorate (for prisons)
- Ombudsman (conduct of public sector agencies)
- District Inspectors (for Mental Health, Substance Addiction and Intellectual Disability Acts)
- Health and Disability Commissioner
- Mental Health Review Tribunal
- Children's Commissioner
- IPCA

Some information on these mechanisms is provided in other sections, additional information is below.

Prisons

308. Corrections aims to resolve complaints informally. If this is not possible, a tiered process is used:

- at the prison site
- through Corrections' national Complaints Response Desk
- through the Office of the Inspectorate.

309. Complaints that are not resolved informally are maintained in the Integrated Offender Management System (IOMS) database (except if made to the Inspectorate). There are strict timeframes for progressing complaints and duties to update the complainant.

Office of the Inspectorate

310. Inspectors are employed by Corrections but independent of activities and complaints they investigate.

311. In 2017, the Office was significantly strengthened and provided with significantly increased funding. As a result, its role has expanded from focusing on complaints to include regular prison inspections. Since 2017, inspections were carried out at all 18 prisons. Inspection reports are published online to enhance transparency. The Office has created a 'Healthy Prisons' inspections framework based on the UN International Minimum Standards for Imprisonment ('Mandela Rules').

312. Prisoners are notified through posters and brochures, that they can complain to an Inspector, including, in cases of urgency, without going through lower-tier processes, for example:

- situations concerning the immediate safety of individuals, including complaints about medication
- decisions about temporary compassionate release.

313. An Inspector must be given unrestricted access to persons, facilities and records.

Ombudsman

314. Prisoners can complain to the Ombudsman. If the Ombudsman finds a breach or unlawful behaviour, they will report their recommendations to the Government. The Ombudsman deals with hundreds of complaints every year, including many from detainees.

Health facilities

315. Patients who feel that they were unjustly deprived of their liberty, or ill-treated, can complain directly to the relevant District Health Board. The Nationwide Health & Disability Advocacy Service provides free and independent assistance during the complaint process.

316. People who feel they were unjustly deprived of their liberty under a Health Act or the Intellectual Disability Act may also complain to one of 34 (Mental Health) District Inspectors (lawyers appointed by the Minister). District Inspectors are required to report to the Ministry monthly. They handle complaints of rights breaches, inspect facilities, conduct inquiries and investigations, and assist patients to apply for a judge's review.

317. A complaint to an Inspector can be escalated to the Mental Health Review Tribunal. The Tribunal must report breaches and make recommendations to the relevant Director of Area Mental Health Services who must resolve the problem. The Tribunal's reports are published in the annual Mental Health report.

318. If a patient is unhappy with the handling of a complaint, they may also complain to the Ombudsman. For the Health and Disability Commissioner see paras. 288-291.

Oranga Tamariki residences

319. The Government is currently carrying out a review of independent oversight of Oranga Tamariki. This will include decisions on independent monitoring for compliance with the new National Care Standards for all care and protection and youth justice residences.

320. Currently, each residence has an independent grievance panel that young people can complain to if they feel they were treated unreasonably or illegally. They can access independent advocacy from a lawyer or family member. The grievance process is explained on entry to a residence. The complaints process for residences was redeveloped in 2015 making it more child friendly, less complicated and more accessible. VOYCE, an independent advocacy and connection service for young persons, can also provide grievance advocates. The effectiveness of the complaints process is monitored closely. Analysis shows that since the changes, young people more readily understand the process.

321. Disciplinary options include three levels of warning and dismissal. Informal processes focus on performance improvement plans. If the young person is still not satisfied they can request a review by the Children's Commissioner or Ombudsman.

Criminal Cases Review Commission

322. Alleged miscarriages of justice can be investigated in a timely, fair and independent manner through the Criminal Cases Review Commission established by the Government in 2018. The Commission will receive applications and can initiate its own inquiries, including thematic inquiries about practices, policies and procedures. The Commission refers cases back to the courts where appropriate.

Attorney-General discretion to prosecute

323. Amending the Attorney-General's discretion relating to prosecutorial decisions for crimes of torture is not necessary. While s12 of the Crimes of Torture Act requires the Attorney-General's consent to bring a prosecution, in practice that function is exercised by the Solicitor-General, the highest non-political law officer. These arrangements have renewed force with the codification of the Solicitor-General's responsibility for public prosecutions in s185 of the Criminal Procedure Act.

324. The Prosecution Guidelines emphasise the universally central tenet of a prosecution system under the rule of law in a democracy: the independence of the prosecutor from persons or agencies that are not properly part of the prosecution decision-making process. This independence refers to freedom from undue or improper pressure from any source, political or otherwise.

27. Investigating 'Operation Burnham'

325. In 2018, the Attorney-General announced a Government inquiry under the Inquiries Act 2013 into allegations relating to Operation Burnham and related matters. Sir Terence Arnold (a former Supreme Court judge) and Rt Hon Sir Geoffrey Palmer (a barrister, legal academic and former Prime Minister) were appointed to lead the inquiry.

326. The Inquiry seeks to establish the facts in connection with the allegations, examine the treatment by New Zealand Defence Force (NZDF) personnel of reports of civilian casualties following the operation, and assess the conduct of NZDF personnel, including compliance with rules of engagement, international humanitarian law and military and political authorisations. The Inquiry has no jurisdiction to make determinations about other nations' actions or civil, criminal, or disciplinary liability of individuals. However, it may make findings of fault and recommend further steps to determine liability.

327. NZDF fully cooperates with the Inquiry and has established a Special Inquiry Office to coordinate NZDF participation and provide support to the Inquiry.

328. It is expected a report will be provided to the Government in 2019.

Article 14

28. Historic ill-treatment

Royal Commission into Historical Abuse in State Care and in the Care of Faith-based Institutions

329. In 2018, the Government established the Royal Commission (Inquiry) and appointed Sir Anand Satyanand (former Governor-General) as Chair. Royal Commissions are reserved for the most serious issues of public importance.

330. The establishment of this Inquiry acknowledges that abuse has occurred in the past and marks an important step forward for victims/survivors. It also responds to public calls for an independent inquiry, including from the New Zealand Human Rights Commission and the Committee on the Elimination of Racial Discrimination. Government also noted the Committee's question (issue 28).

331. Following extensive public consultation, the finalised terms of reference acknowledges and reaffirms New Zealand's international obligations to take appropriate legislative, administrative, judicial or other measures to protect people from abuse and recognises that abuse warrants prompt and impartial examination.

332. The Inquiry can examine abuse of children, young persons, and vulnerable adults occurring between 1950 and 1999, with some discretion to look beyond these dates. It will consider physical, emotional and sexual abuse and neglect, as defined in domestic and international standards.

333. A key focus is to examine the differential impacts of abuse, for example, for Māori and Pasifika people, LGBTQI people, and persons with disability or mental health issues.

334. The Inquiry will examine the nature and extent of abuse; its immediate and long-term impacts on individuals, families and communities; contributing factors; and lessons for the future. It will examine current settings to prevent and respond to abuse, including existing redress processes.

335. The Inquiry's recommendations may concern legislative, administrative, policy, practice, or procedural change. It will make recommendations on appropriate steps to address the harm caused, including whether the State should issue an apology. Under the Inquiries Act, the Inquiry cannot make findings of civil, criminal or disciplinary liability, but can make findings of fault and recommend steps be taken to determine liability.

Existing avenues for redress

Historic Claims Team

336. The Ministry of Social Development's (MSD) Historic Claims team works with people who were abused or neglected in care, custody or guardianship.

337. As at June 2018, MSD has resolved 1,727 of the 3,010 claims received, and made apologies and payments to 1,398 people totalling over $26m. Individual payments range between $10,000 and $80,000. The number of new claims to MSD continues to increase, peaking in 2017 at 431.

338. MSD's claims process is resource-intensive and takes considerable time to complete, leading to an increasing backlog of claims. One priority is ensuring that claimants' concerns are heard and appropriate actions taken as soon as possible. MSD is working on improving efficiency of processes. Feedback from consultation with Māori is being incorporated into a new approach.

Historic Abuse Resolution Service (HARS)

339. In 2012, the Ministry of Health established HARS to support the resolution of historic claims of ill-treatment without the need for court proceedings. HARS considers allegations of abuse in state-run psychiatric facilities prior to 1993 and, in appropriate cases, approves an apology and ex-gratia payment up to $9,000.

340. Following former patients' allegations of abuse, the Government offered apologies and compensation. Between July 2012 and July 2018, 191 claims were settled, and compensation of $1.145m paid.

341. Since 2014, three new claims were made by former patients of Lake Alice. Two were settled, the other is underway. In addition, two top-up claims were made and settled. The amount of compensation is withheld for privacy reasons.

342. Mr Zentveld's individual communication to the Committee relates to Lake Alice hospital. Events at Lake Alice will also be covered by the Royal Commission.

29. Redress and compensation

Prisoners and Victims Claims Act (PVCA)

343. There were no steps to amend any clauses of the Prisoners and Victims Claims (Continuation and Amendment) Act 2013. The requirement that damages may only be awarded after consideration of a range of factors is consistent with the approach adopted by our courts for awarding damages for rights breaches.

344. Courts can award, and have awarded, compensation or other remedies for breaches of the Bill of Rights Act (NZBORA) which includes the right not to be subjected to torture or cruel treatment, and to be treated with dignity (s. eg para 18).

Redress and compensation

345. The Royal Commission (issue 28) may make recommendations concerning the current redress and compensation regime.

Prisons

346. There were some instances over the reporting period where Corrections settled claims of alleged ill-treatment. Settlements do not indicate acceptance that "ill-treatment" occurred. One payment was made for application of restraint. A payment has also been made under the PVCA.

347. Following Communication No. 672/2015, filed by Mr Vogel, in 2017, the Committee against Torture found a violation of Article 16. This case related to an event of prolonged seclusion for disciplinary purposes in 2000. The Committee did not find Article 14 was breached. In 2018, the Government granted an ex-gratia payment of $10,000 plus contribution to legal cost to Mr Vogel. This is the first time the Government has given compensation for a breach of a human rights treaty following a treaty body's finding.

Compensation for wrongful conviction and imprisonment

348. Under 1998 Cabinet Guidelines, the Government may pay compensation on an ex-gratia basis to persons wrongfully convicted and imprisoned. Claims accepted for consideration are usually referred to a retired judge or an eminent lawyer for independent assessment. They will assess whether the claimant is innocent on the balance of probabilities. If so, they will ordinarily recommend an appropriate amount of compensation.

349. In the reporting period, the Government has compensated two claimants under the Guidelines ($3.5m and $550,000). The first claimant, Teina Pora, spent almost 20 years in prison and the Government initially awarded compensation of approximately $2.5m. Following his successful judicial review proceedings, the Government awarded an additional $1m to adjust compensation for inflation.

Oranga Tamariki places of detention (for young people)

350. Compensation may be available to persons filing a civil claim against the Ministry. Alternatively, the Ministry may decide to make an ex-gratia payment as a mark of goodwill or moral obligation where no legal

liability is recognised. If a child were to suffer abuse within Oranga Tamariki care, Oranga Tamariki would also consider providing access to specialist services like counselling.

Health services

351. Comprehensive information on redress and compensation for ill-treatment in health places of detention is not available. For historic ill-treatment in psychiatric facilities see issue 28.

352. Persons who have experienced trauma can access services through the public health system. Services are free of charge or subsidised. Services increasingly take a 'trauma-informed' approach. People who experience a mental injury, such as trauma, resulting from physical injury may also be eligible for compensation or funding for treatment through the Accident Compensation Corporation, a no-fault public insurance.

353. There is still room for improving services. Health workforce centres offer training and resources on trauma informed care to improve skills in responding to trauma. The report of the Government Inquiry into Mental Health and Addiction emphasises the importance of a trauma-informed approach.

Victims' Rights

354. The previous periodic report included information on support for victims of crime (para. 224). In 2014, the Victims' Rights Act 2002 was amended strengthening rights of victims. This includes better services more opportunities for involvement in criminal justice processes. In 2015, the role of Chief Victims Adviser, an independent advisor to the Minister of Justice, was established. In 2015, the Victims' Rights Code, including detailed information on rights, duties and complaints mechanisms, was approved.

30. Reservation to Article 14

355. New Zealand reserved the right to award compensation to torture victims referred to in Article 14 of the Convention only at the discretion of the Attorney-General.

356. At the time of the reservation, there was no statutory remedy for torture victims. Since the reservation was entered, however, NZBORA was enacted and courts have held that they can award compensation for breaches of the Act (see para. 18).

357. This means compensation for victims of torture or ill-treatment is available. Arguably, therefore, removing the reservation would not affect the legal position of claimants.

Article 15

31. Admissibility of evidence

358. NZBORA affirms the right not to be subjected to torture or ill-treatment. In 2017, the Supreme Court stated that information obtained in circumstances such as torture could not be used by enforcement authorities for any purpose.[2]

359. S29 of the Evidence Act 2006 provides a defendant's statement must be excluded if it was influenced by oppression or violent, inhuman, or degrading treatment of any person, or threats thereof. This discourages oppressive interrogation. Where this issue is raised, a statement may be admitted only if the Court is satisfied, beyond reasonable doubt, that the statement was not influenced by oppression.

360. Under s28, a statement must be excluded if it is unreliable. Where reliability is in issue, the statement can only be admitted if the Court is satisfied, on the balance of probabilities, that the circumstances surrounding the statement were not likely to have affected its reliability.

[2] *R v Alford*[2] [2017] 1 NZLR 710

361. S30 applies where a question is raised as to the propriety of how evidence has been obtained. It requires the Court to consider whether, on the balance of probabilities, evidence was improperly obtained; and if so, whether the evidence be excluded. The Chief Justice has issued guidance on Police questioning. Courts must consider the guidance when determining whether Police have improperly obtained a statement.

Case law

362. In 2012, the Supreme Court emphasised in *R v Hamed*[3] that s30 must be interpreted in a manner consistent with fundamental human rights.

363. In the 2018 case of *S v NZ Police*,[4] the High Court excluded evidence as being obtained improperly. The case concerned an appeal of a conviction for driving with excess blood alcohol content. During the collection of the blood specimen the request to use the bathroom was refused by Police and the appellant suffered discomfort and embarrassment. The appeals court concluded the sample was obtained in consequence of a breach of the appellant's rights under NZBORA and must be excluded. As there was no longer any evidence to support the conviction, it was set aside.

Article 16

32. Intersex children

364. The Government is unaware of any cases of sex assignment surgery on intersex children during the reporting period. Since 2014, seven children with an intersex condition underwent limited surgery. In each case, surgery was undertaken to resolve a specific functional problem and did not involve sex assignment or re-assignment. Only prior to 2007, some children were sent to Australia for treatment funded through a Special Fund.

365. In 2017, the Ministry of Health initiated the establishment of a Child & Youth Intersex Clinical Network which will develop best practice guidelines, protocols and care pathways for intersex children up to 18 years. The Network's Clinical Reference Group includes an endocrinologist, psychiatrist, Human Rights Commissioner, parent advocate, psychotherapist, midwife, paediatric surgeon and intersex advocates. The Network is Government-funded for two years.

III. Other issues/general information

33. Protecting human rights under anti-terrorism legislation

366. New Zealand experienced an unprecedented act of terrorism against our Muslim community in Christchurch on 15 March 2019. This attack reinforced our commitment to protecting human rights of all people in New Zealand. The Government has no tolerance for violence and extremism of any kind. New Zealand condemns all acts of terrorism. In light of these events, the Government is assessing whether current counter-terrorism regulatory frameworks are still adequate. It will do so in a manner consistent with New Zealand's human rights obligations.

367. Currently New Zealand has a range of measures to prevent and respond to the threat of terrorism, including specialist law, the general criminal laws, and other policy and administrative measures.

368. The Terrorism Suppression Act 2002 provides for offences related to certain terrorist activities. We refer the Committee to the previous report outlining the measures to ensure that this Act is applied in a manner consistent with international human rights obligations.

369. The Intelligence and Security Act 2017 puts in place a new legislative scheme for the intelligence and security agencies. It includes numerous references to consistency with human rights.

[3] *R v Hamed* [2012] 2 NZLR 305

[4] *S v NZ Police* [2018] NZHC 1582

370. Legislation was designed to be proportionate to the domestic terrorist threat, and consistent with human rights. The Intelligence and Security Act is consistent with freedom of expression, freedom of movement, freedom from unreasonable search, the right to be presumed innocent and the right to justice encapsulated in NZBORA.

371. Where legislation provides for intrusive powers to deal with the threat of terrorism, human rights safeguards are built into the purpose of the legislation. The purpose of the Search and Surveillance Act 2012 is to facilitate investigation and prosecution in a manner "consistent with human rights values" (s5). One of the purposes of the Intelligence and Security Act is to ensure the functions of the intelligence and security agencies are performed in accordance with "all human rights obligations" (s3). Enforcement officer training references the Crimes of Torture Act 1989 – which enshrines Article 4 of the Convention and the Optional Protocol.

372. No one has convicted of terrorism-specific offending, although a small number has been convicted under objectionable publications legislation for terrorism-related material.

373. Legal avenues and remedies are available to persons subjected to anti-terrorism measures. The Government is not aware of any complaints of non-observance of international standards relating to terrorism-linked offending within New Zealand.

34. General information

374. Any other relevant information is covered in the report.

Appendices to New Zealand's seventh periodic report under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2019

CONTENTS

Appendix 1: Information on the implementation of the Convention in Tokelau

Tokelau

1. The Convention applies to Tokelau, having been extended to that territory by New Zealand when it ratified the Convention on 10 December 1989.

2. Tokelau consists of three remote atolls in the South Pacific Ocean, 500km to the north of Samoa. Tokelau's total land area is 12.2 square kilometres, and its population is approximately 1500. Tokelau is a non-self-governing territory of New Zealand and its people are New Zealand citizens.

3. Tokelau has a separate legal and judicial system. New Zealand statute law is generally not applicable in Tokelau, and only applies where expressly provided. Since the early 1980s steps have been taken to build up for Tokelau a body of its own law based, where applicable, on local custom.

4. Criminal offences in Tokelau tend to be of a minor nature, and are dealt with by lay Judges, in cooperation with village police officers, by way of reprimand, sentences of community service, or fines. The most serious criminal and civil matters are within the jurisdiction of the New Zealand High Court and Court of Appeal, although courts have never exercised their jurisdiction over Tokelau with respect to criminal matters.

5. There are no prisons or other places of restricted movement in Tokelau. Torture is not a feature of government or community behaviour and has not been viewed as warranting special attention in the law of Tokelau beyond the provisions in the criminal code for offences against the person and an administrative mechanism for protection of human rights contained in the Rules of the General Fono of Tokelau.

Appendix 2: Detailed outcomes of Police taser reports

	Outcome	Action	Count
2014	**Not upheld**	No action	10
	Upheld	Training	4
		Expectation-setting	1
2015	**Not upheld**	No action	16
	Upheld	Training	2
		Expectation-setting	3
		Debrief/Lessons Learned and Criminal Charges	2
2016	**Not upheld**	No action	17
	Upheld	Training	2
		Expectation-setting	1
		Debrief/Lessons Learned	1
		Professional Conversation	1
		Policy and Procedure	1
		Second Warning	1
		Final Warning	1
	Ongoing		1
2017	**Not upheld**	No action	8
	Upheld	Debrief/Lessons Learnt	1
		First Warning	1
		No action	1
	Ongoing		2

Appendix 3: Police custody 2014-2017

		17 and younger	17 and younger	17 and younger	18 and older	18 and older	18 and older	Age not recorded	Age not recorded	Age not recorded
		Female	Male	Unknown	Female	Male	Unknown	Female	Male	Unknown
2014	ASIAN	12	91		665	3,760	13		4	
	EUROPEAN	844	2,631		7,819	37,513	30	7	19	
	MAORI	1,904	6,692	2	12,778	49,991	16	5	9	1
	OTHER	32	131		205	1,913	4		8	59
	PACIFIC	304	1,584	1	1,425	12,461	4		16	1
Total 2014		**3,096**	**11,129**	**3**	**22,892**	**105,638**	**67**	**12**	**56**	**61**
2015	ASIAN	21	114		726	4,865	14		4	
	EUROPEAN	758	2,471	1	8,370	39,571	30	8	18	
	MAORI	2,120	7,123	2	13,961	56,298	11	7	14	
	OTHER	16	108		255	2,528	3		11	78
	PACIFIC	363	1,878		1,853	15,348	10	1	6	1
Total 2015		**3,278**	**11,694**	**3**	**25,165**	**118,610**	**68**	**16**	**53**	**79**
2016	ASIAN	34	116		655	5,656	8		1	
	EUROPEAN	653	2,294		8,501	40,320	17	2	10	1
	MAORI	2,368	8,038		15,469	60,204	24	5	19	
	OTHER	16	157		307	2,496	7	1	5	83
	PACIFIC	458	1,833		1,797	16,156	1	5	9	
Total 2016		**3,529**	**12,438**		**26,729**	**124,832**	**57**	**13**	**44**	**84**
2017	ASIAN	15	105		683	5,540	24	5	2	1
	EUROPEAN	572	2,157	1	9,361	42,545	15	3	15	1
	MAORI	1,905	7,144	2	16,968	63,193	20	6	13	1
	OTHER	20	111		294	2,905	6		7	92
	PACIFIC	297	1,463		2,007	16,988	5	1	12	
Total 2017		**2,809**	**10,980**	**3**	**29,313**	**131,171**	**70**	**15**	**49**	**95**
	Total 2014-2017	**12,712**	**46,241**	**9**	**104,099**	**480,251**	**262**	**56**	**202**	**319**

Appendix 4: Prison population as at 30 September 2018

	European		Māori		Other		Pacific		Not recorded		Total
Age Group	**Female**	**Male**	**Female**	**Male**	**Female**	**Male**	**Female**	**Male**	**Female**	**Male**	
Under 20	5	41	17	150	1	5	5	23	2	35	284
20 - 29	61	664	153	1594	4	122	14	370	7	64	3053
30 - 39	75	786	147	1465	16	145	15	339	2	53	3043
40 - 49	30	638	67	915	6	84	8	210	3	44	2005
50 and over	45	743	36	582	7	57	3	123	2	66	1664
Not recorded		1	2								3
Total	**216**	**2873**	**422**	**4706**	**34**	**413**	**45**	**1065**	**16**	**262**	**10052**

Appendix 5: Prison Population 2014 – 2018

Year (as at)	Data	30/09/2014	30/09/2015	30/09/2016	30/09/2017	30/09/2018
Remand Accused	**Ethnicity**					
	Māori	*651*	*753*	*917*	*1181*	*1041*
	European	*357*	*413*	*486*	*565*	*492*
	Pacific	*132*	*165*	*179*	*233*	*204*
	Other (incl. Asian)	*68*	*89*	*87*	*94*	*68*
	Unknown	*10*	*27*	*18*	*83*	*86*
	Age					
	Under 20	*60*	*76*	*85*	*106*	*69*
	020 - 024	*235*	*266*	*304*	*320*	*262*
	025 - 029	*230*	*296*	*359*	*468*	*379*
	030-039	*365*	*427*	*510*	*690*	*657*
	040-049	*244*	*268*	*308*	*389*	*347*
	050-059	*73*	*87*	*102*	*141*	*140*
	60 and over	*11*	*27*	*19*	*42*	*37*
	Gender					
	Male	*1126*	*1333*	*1587*	*1996*	*1751*
	Female	*75*	*99*	*99*	*153*	*134*
	Indeterminate	*2*	*3*	*1*		*2*
	Unknown	*15*	*12*		*7*	*4*
	Total	**1218**	**1447**	**1687**	**2156**	**1891**
Remand Convicted	**Ethnicity**					
	Māori	*316*	*396*	*512*	*474*	*587*
	European	*199*	*194*	*291*	*241*	*289*
	Pacific	*57*	*90*	*126*	*62*	*95*
	Other (incl. Asian)	*11*	*25*	*39*	*23*	*30*
	Unknown	*1*	*15*	*7*	*19*	*34*

	Age					
	Under 20	*52*	*76*	*83*	*66*	*61*
	020 - 024	*106*	*146*	*200*	*140*	*176*
	025 - 029	*117*	*166*	*233*	*193*	*239*
	030-039	*168*	*198*	*278*	*238*	*340*
	040-049	*91*	*88*	*135*	*127*	*161*
	050-059	*31*	*37*	*36*	*43*	*48*
	60 and over	*19*	*9*	*10*	*12*	*10*
	Gender					
	Male	*528*	*661*	*879*	*736*	*943*
	Female	*54*	*54*	*96*	*83*	*92*
	Indeterminate					
	Unknown	*2*	*5*			
	Total	**584**	**720**	**975**	**819**	**1035**
Sentenced	**Ethnicity**					
	Māori	*3442*	*3397*	*3500*	*3639*	*3485*
	European	*2316*	*2314*	*2362*	*2483*	*2299*
	Pacific	*813*	*775*	*797*	*870*	*807*
	Other (incl. Asian)	*273*	*311*	*342*	*369*	*359*
	Unknown	*32*	*39*	*54*	*96*	*148*
	Age					
	Under 20	*227*	*210*	*192*	*170*	*154*
	020 - 024	*1041*	*949*	*960*	*942*	*820*
	025 - 029	*1210*	*1182*	*1274*	*1349*	*1171*
	030-039	*1770*	*1811*	*1855*	*2101*	*2036*
	040-049	*1438*	*1462*	*1494*	*1537*	*1490*
	050-059	*813*	*800*	*826*	*870*	*896*
	60 and over	*377*	*422*	*454*	*488*	*529*
	Gender					
	Male	*6242*	*6195*	*6586*	*6897*	*6596*
	Female	*388*	*417*	*464*	*554*	*498*
	Indeterminate	*5*	*8*	*1*	*3*	*3*
	Unknown	*241*	*216*	*4*	*3*	*1*
	Total	**6876**	**6836**	**7055**	**7457**	**7098**
Capacity	*Bed numbers*	*	*	10240	10728	10652
	Occupancy rate	*	*	95%	97%	94%

Appendix 6: Detention in Service Corrective Establishment 2014 – 2018

2014 - 2015	AGE	SEX	NATIONALITY	SENTENCE (days)
	20	M	NZ	16
	23	M	NZ	20
	23	M	NZ	9
	24	F	NZ	6
	19	M	NZ	11
	24	M	NZ	10
	24	M	NZ	24
	22	F	NZ	21
	29	M	NZ	14
	24	M	NZ	18
	24	M	NZ	18
	29	M	NZ	5
	22	M	NZ	7
	24	M	NZ	8
	24	M	NZ	9
	21	M	NZ	18
	24	F	NZ	10
	22	M	NZ	22
	21	M	NZ	22
	19	M	NZ	18
	20	M	NZ	10
	20	M	NZ	16
	23	M	NZ	9
	19	M	NZ	23
	25	M	NZ	21
	33	M	NZ	8
	27	F	NZ	10
	27	M	NZ	90
	23	M	NZ	21
	26	F	NZ	10
	19	M	NZ	17
2015 - 2016				
	21	M	NZ	10
	24	M	NZ	7
	19	M	NZ	5
	19	M	NZ	23
	18	M	NZ	18
	20	M	NZ	12
	21	M	NZ	11
	20	M	NZ	23
	24	M	NZ	90
	23	M	NZ	21
	20	M	NZ	9
	25	M	NZ	31
	26	M	NZ	10
	28	M	NZ	10
	21	M	NZ	14
	26	M	NZ	14
	21	M	NZ	14
	26	M	NZ	8
	22	M	NZ	21
	21	M	NZ	14

2015 – 2016 CONT'D	AGE	GENDER	NATIONALITY	SENTENCE
	27	M	NZ	14
	19	F	NZ	14
	23	F	NZ	14
	22	M	NZ	7
	25	M	NZ	28
	30	M	NZ	21
	22	M	NZ	28
	22	M	NZ	25
	21	M	NZ	14
	22	M	NZ	90
	19	M	NZ	14
	23	M	NZ	14
	22	M	NZ	10
	31	M	NZ	14
	22	M	NZ	14
	20	M	NZ	14
2016 - 2017				
	19	M	NZ	12
	24	M	NZ	21
	22	M	NZ	7
	21	M	NZ	21
	25	M	NZ	20
	24	M	NZ	14
	19	M	NZ	16
	20	M	NZ	7
	23	M	NZ	16
	21	M	NZ	16
	23	M	NZ	28
	24	M	NZ	7
	23	M	NZ	21
	21	F	NZ	13
	21	M	NZ	7
	24	M	NZ	12
	21	M	NZ	150
2017 - 2018				
	24	M	NZ	14
	25	M	NZ	112
	25	M	NZ	28
	33	M	NZ EUROPEAN	14
	26	M	MAORI / PACIFIC ISLAND	15
	27	M	MAORI	17
	25	M	PNG	18
	25	M	THAILAND	14
	24	M	MAORI	7
	20	M	MAORI / PACIFIC ISLAND	15
	24	M	MAORI	8
	20	M	MAORI	5
	26		MAORI / COOK ISLAND	18
	22	M	MAORI	5
	22	M	MAORI	21

Appendix 7: Deaths in prisons 2014 - 2018

				Financial Year					
Category	**Ethnicity**	**Age**	**Gender**	**2013-14**	**2014-15**	**2015-16**	**2016-17**	**2017-18**	**Total**
Death – Natural	Māori	22	M				1		1
		29	M	1					1
		33	M				1		1
		36	M				1		1
		37	M	1					1
		43	M			1			1
		45	M			1			1
		49	M		1				1
		50	M	1	1	1	1		4
		51	M				1		1
		52	M				1		1
		53	M		1	1	1	1	4
		56	M				1		1
		62	M				1	1	2
		64	M		1				1
		65	M			1			1
		69	M			1			1
		70	M					2	2
		74	M				1		1
		75	M		1				1
		76	M					1	1
		78	M			1	1		2
		81	M					1	1
		85	M					1	1
	Total			**3**	**5**	**7**	**11**	**7**	**33**
	European	25	M		1				1
		37	M				1		1
		52	F	1				1	2
		57	M	1					1
		61	M		1				1
		62	M		1	1			2
		63	M			1		1	2
		66	M				1		1
		67	M			1		1	2
		69	M	1		1			2
		71	M		1				1
		73	M			1			1
		78	M			1			1
		79	M		1				1
		85	M	1					1
		87	M				1		1
	Total			**4**	**5**	**6**	**3**	**3**	**21**
	Samoan	39	M			1			1
		65	M	1					1
		77	M				1		1
	Total			**1**	**0**	**1**	**1**	**0**	**3**
	Chinese	34	M			1			1
	Total			**0**	**0**	**1**	**0**	**0**	**1**
	Unknown	69	M	1					1
		71	M	1					1
	Total			**2**	**0**	**0**	**0**	**0**	**2**
TOTAL				**10**	**10**	**15**	**15**	**10**	**60**

				Financial Year					
Category	**Ethnicity**	**Age**	**Gender**	**2013-14**	**2014-15**	**2015-16**	**2016-17**	**2017-18**	**Total**
Death - Unnatural	Māori	24	M		1				1
		31	M					1	1
		35	M			1			1
		48	M			1			1
		19	M					1	1
		37	M					1	1
		47	M		1				1
		29	F				1		1
		28	M		1				1
		34	M					1	1
		43	M					1	1
		27	M		1				1
		28	M			1			1
		21	M			1			1
		34	M			1			1
		45	M					1	1
		46	M		1				1
		55	M					1	1
		63	M			1			1
		30	M			1			1
		32	M			1			1
		29	M		1				1
		35	M	1					1
		26	M			1			1
		27	M			1			1
		41	M		1				1
		24	M			1			1
	Total			**1**	**7**	**11**	**1**	**7**	**27**
	European	20	M	1					1
		30	M	1					1
	Total			**2**	**0**	**0**	**0**	**0**	**2**
	Samoan	25	M		1				1
	Total			**0**	**1**	**0**	**0**	**0**	**1**
TOTAL				**3**	**8**	**11**	**1**	**7**	**30**

Appendix 8: Deaths in custody of mental health services, 2014 – 2017

Event year	Gender	Cause of death	Coroner's inquiry	Investigation
2014	Male	Suspected suicide	Ongoing	Internal and external incident reviews completed
	Male	Medical reasons	Completed	Internal incident review completed
	Male	Medical reasons	Completed	Unknown
	Female	Medical reasons	Completed	Internal incident review completed
	Female	Medical reasons	Completed	Internal incident review completed
	Female	Natural cause	Completed	Internal incident review completed
	Male	Medical reasons	Completed	Unknown
	Male	Suspected suicide	Ongoing	Internal incident review completed
	Female	Medical reasons	Completed	Internal incident review completed
	Male	Suicide	Completed	Internal incident review completed
	Male	Accident	Completed	Internal incident review completed
2015	Male	Accident	Completed	Unknown
	Male	Suspected suicide	Ongoing	Internal incident review completed
	Male	Medical reasons	Completed	Unknown
	Female	Medical reasons	Completed	Unknown
	Male	Medical reasons	Ongoing	Unknown
	Female	Suspected suicide	Ongoing	Internal incident review completed
	Female	Medical reasons	Completed	Internal incident review completed
	Male	Medical reasons	Ongoing	Unknown
	Male	Natural causes	Completed	Unknown
2016	Female	Suicide	Completed	Internal incident review completed
	Male	Medical reasons	Ongoing	Internal incident review completed
	Female	Medical reasons	Completed	Unknown
	Male	Medical reasons	Ongoing	Unknown
	Female	Suspected suicide	Ongoing	Review in process
	Male	Medical reasons	Completed	Review in process
2017	Male	Overdose	Ongoing	Internal incident review completed
	Male	Suspected suicide	Completed	Unknown
	Male	Medical reasons	Completed	Unknown
	Male	Medical reasons	Ongoing	Unknown
	Female	Suspected suicide	Ongoing	Internal incident review completed
	Female	Natural causes	Completed	Unknown
	Male	Medical reasons	Completed	Unknown
	Male	Undetermined	Ongoing	Preliminary internal incident review completed

	Male	Suspected suicide	Ongoing	External incident review completed, internal incident review in process
	Male	Undetermined	Ongoing	Unknown
	Male	Undetermined	Ongoing	Internal incident review in process

Note:

(1) In New Zealand, a death is only officially classified as suicide by the coroner on completion of the coroner's inquiry. Only those deaths determined as 'intentionally self-inflicted' after the inquiry will receive a final verdict of suicide. A coronial inquiry is unlikely to occur within a calendar year of an event occurring, therefore when a death appears to be self-inflicted but the intent has not yet been determined it is called a 'suspected suicide'. This definition has been used to provide the above information. Please note there may have been coroner's inquiries that have been completed for some of the deaths listed above that have not been received by the Ministry of Health.

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List of issues prior to submission of the seventh periodic report of New Zealand*

Specific information on the implementation of articles 1-16 of the Convention, including with regard to the Committee's previous recommendations

Follow-up questions from the previous reporting cycle

1. In paragraph 21 of its previous concluding observations (see CAT/C/NZL/CO/6),[1] the Committee requested New Zealand to provide further information regarding areas of particular concern identified by the Committee in paragraph 9, concerning the national preventive mechanism, paragraph 10, on the Independent Police Conduct Authority, and paragraph 15, on solitary confinement and seclusion in mental health facilities. Noting that a reply concerning the information sought by the Committee was provided on 3 June 2016 (CAT/C/NZL/CO/6/Add.1), the Committee expresses appreciation for the State party's responses on those matters and the substantive information provided. In view of that information, the Committee still considers that the recommendations included in paragraphs 10 and 15 mentioned above have not yet been implemented (see paras. 26 and 19, respectively, of the present document).

Articles 1 and 4

2. With reference to the Committee's previous concluding observations (para. 8), please provide detailed information on the measures taken to incorporate all the provisions of the Convention into the State party's legislation.[2] Please indicate the measures adopted by the State party to ensure that torture or complicity in torture are subject to appropriate penalties commensurate with the seriousness of the crime, in accordance with article 4 of the Convention.

* Adopted by the Committee at its sixtieth session (18 April-12 May 2017).

1 Unless otherwise indicated, paragraph numbers in parentheses refer to the previous concluding observations adopted by the Committee.

2 See CAT/OP/NZL/1, para. 19.

Article 2[3]

3. Please provide information on the steps taken, and procedures in place, to ensure that all detainees are informed of their rights at the time of arrest and of the charges against them.[4]

4. With regard to the Committee's previous concluding observations (para. 9), and taking note of the State party's follow-up replies,[5] please provide information on the activities and achievements of the national preventive mechanism and its entities with respect to the prevention of torture and ill-treatment during the period under review. Please also provide updated information on the material, human and budgetary resources allocated for the effective functioning of the national preventive mechanism and the five entities composing it.[6]

5. Further to the Committee's previous concluding observations (para. 11), please provide information on the legislative, administrative and other measures taken to prevent and combat all forms of violence against women, including domestic violence.[7] Please also provide updated information on the protection and support services available to victims of gender-based violence in the State party. Please include statistical data, disaggregated by the age and ethnicity or nationality of victims, on the number of complaints, investigations, prosecutions, convictions and sentences recorded in cases of gender-based violence since the consideration of the sixth periodic report of New Zealand.

6. Please provide updated information, disaggregated by the age, sex and ethnicity or nationality of the victims, on the number of complaints, investigations, prosecutions and sentences recorded in cases of trafficking in persons since the consideration of the State party's previous report. Please also provide information on:[8]

(a) Any new legislation or measures that have been adopted to prevent, combat or criminalize trafficking in persons;

(b) The measures adopted to ensure that victims of trafficking have access to effective remedies of reparation;

(c) The signature of agreements with countries concerned to prevent and combat trafficking in persons.

Article 3

7. With reference to the previous concluding observations (para. 18), please provide information on the measures that have been taken to revise national legislation on refugees and asylum seekers to fulfil all obligations under article 3 of the Convention.[9] Please also provide detailed information on the measures adopted to ensure that the specific needs of vulnerable persons seeking asylum in New Zealand, including victims of torture and/or trauma, are fully taken into consideration and addressed in a timely manner.

8. Please provide information about the number of asylum applications received during the period under review, the number of successful applications and the number of asylum

3 The issues raised under article 2 could also touch on issues raised under other articles of the Convention, including article 16. As stated in paragraph 3 of the Committee's general comment No. 2 (2007) on the implementation of article 2 by State parties, the obligation to prevent torture in article 2 is wide-ranging. The obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment under article 16 (1) are indivisible, interdependent and interrelated. The obligation to prevent such ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture. In practice, the definitional threshold between ill-treatment and torture is often not clear. See also chapter V of the same general comment.

4 See CAT/OP/NZL/1, paras. 42-43 and 72-73; and A/HRC/30/36/Add.2, paras. 26 and 34.

5 See CAT/C/NZL/CO/6/Add.1, paras. 2-8.

6 See CAT/OP/NZL/1, paras. 12-15.

7 See CCPR/C/NZL/CO/6, paras. 29-30.

8 See CAT/C/NZL/CO/6, para. 12; CCPR/C/NZL/CO/6, paras. 39-40; and CRC/C/OPSC/NZL/CO/1.

9 See also CCPR/C/NZL/CO/6, paras. 35-36.

seekers whose applications were accepted because they had been tortured or may be tortured if returned to their country of origin. Please include information, disaggregated by sex, age and country of origin, on the number of persons who have been returned, extradited or expelled since the consideration of the previous report. Please provide details on the grounds on which they were sent back, including the list of countries to which individuals were returned. Please provide updated information on the type of appeal mechanisms that exist, any appeals that have been made and the outcome of those appeals. Do such appeals have suspensive effect?

9. Please indicate the number of refoulements, extraditions and expulsions carried out by the State party during the reporting period on the basis of the acceptance of diplomatic assurances or the equivalent thereof, as well as any instances where the State party has offered such diplomatic assurances or guarantees, and what measures have been taken in such cases with regard to subsequent monitoring.

10. Please provide information on the legislative and other mechanisms taken to improve the identification and determination of statelessness and introduce procedural safeguards to improve access to the procedure to determine statelessness.

Articles 5-9

11. Please provide information on any new legislation or measures that have been adopted to implement article 5 of the Convention.

12. Please inform the Committee of any extradition treaties concluded with other States parties and indicate whether the offences referred to in article 4 of the Convention are included as extraditable offences in such treaties.

13. Please clarify the mutual judicial assistance treaties or agreements that the State party has entered into with other entities, such as countries, international tribunals or international institutions, and whether such treaties or agreements have led in practice to the transfer of any evidence in connection with prosecutions concerning torture and ill-treatment. Please provide examples.

Article 10

14. Please provide up-to-date information on educational programmes that have been developed by the State party to ensure that all law enforcement officials, prison staff and border guards are fully aware of the provisions of the Convention and know that breaches will not be tolerated and will be investigated, and that any offenders will be prosecuted. Please indicate whether the State party has developed a methodology to assess the effectiveness of training and educational programmes in reducing cases of torture and ill-treatment and, if so, please provide information on the methodology.

15. Bearing in mind the Committee's previous concluding observations (para. 17), please detail the training methodology and programmes used when instructing law enforcement officials, prison staff and other security forces in the use of electrical-discharge weapons or any other less-than-lethal device. Please detail any incidents that have occurred as a result of using such devices, and provide information detailing the outcomes of any investigations into such incidents. Has the State party revised the regulations governing the use of such weapons?[10]

16. Please provide detailed information on the training programmes for judges, prosecutors, forensic doctors and medical personnel dealing with detained persons on detecting and documenting the physical and psychological sequelae of torture. Do such programmes include specific training with regard to the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol)?

10 See CCPR/C/NZL/CO/6, paras. 33-34.

Article 11

17. Please describe the procedures in place for ensuring compliance with article 11 of the Convention and provide information on any interrogation rules, instructions, methods and practices or on any arrangements for custody, in particular those that may have been introduced since the consideration of the previous report.[11] Please indicate the frequency with which they are reviewed.

18. In the light of the previous concluding observations (paras. 13-14), please provide statistical data, disaggregated by sex, age and ethnic origin or nationality, on the number of pretrial detainees and convicted prisoners and on the occupancy rate of all places of detention.[12] Please describe the measures taken by the State party to reduce prison overcrowding, including alternatives to imprisonment, both before and after trial.[13] Please inform the Committee on the measures taken to address concerns regarding prolonged pretrial detention[14] and the general conditions of detention in some police stations gazetted as jails[15] and other facilities.[16] What concrete measures have been taken to address concerns regarding health-care provision[17] and the excessive resort to strip searches in prisons?[18]

19. With reference to the Committee's previous concluding observations (para. 15) and in the light of the State party's follow-up replies,[19] please indicate the measures taken by the State party to bring its legislation and practice on solitary confinement into line with international standards, in accordance with rules 43 to 46 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).[20]

20. Please provide information on the efforts of the State party to meet the special needs of minors in detention, especially those in pretrial detention (para. 16).[21] Please comment on reports that there are inconsistencies in the treatment of children and young people deprived of their liberty, particularly in managing challenging behaviour, and the assertions in the 2014/15 report on national preventive mechanisms entitled "Monitoring places of detention" that the material conditions at some residences are not upholding young people's well-being and that there is a lack of access to specialist mental health treatment.

21. Please provide information about the frequency of inter-prisoner violence, including any cases involving possible negligence on the part of law enforcement personnel, and about the number of complaints made in this regard and their outcome. What preventive measures have been taken?[22]

22. Please provide statistical data regarding deaths in custody during the period under consideration, disaggregated by place of detention, the sex, age and ethnicity or nationality of the deceased and the cause of the death. Please provide detailed information on the results of the investigations into those deaths and on the measures taken to prevent similar cases from occurring in the future.[23] Please indicate whether relatives received compensation in any of those cases. In particular, please provide information on the outcome of the investigations and on disciplinary and/or criminal proceedings concerning the death of Sentry Taitoko on 23 February 2014.

23. In the light of the Committee's previous concluding observations (para. 18 (d)), please provide information on how the State party will ensure that detention of asylum

11 See CAT/OP/NZL/1, paras. 24-28, 82-90 and 110-112.
12 See CAT/C/NZL/CO/6, para. 14; CAT/OP/NZL/1, paras. 50-52; CCPR/C/NZL/CO/6, paras. 25-26; and A/HRC/30/36/Add.2, paras. 49-62.
13 See CAT/OP/NZL/1, paras. 33-34.
14 Ibid., paras. 19-32.
15 Ibid., paras. 68-71.
16 Ibid., paras. 80-81 and 98-106. See also CCPR/C/NZL/CO/6, paras. 41-42; and A/HRC/30/36/Add.2, para. 37.
17 See CAT/OP/NZL/1, paras. 58-65.
18 See CAT/C/NZL/CO/6, para. 13.
19 See CAT/C/NZL/CO/6/Add.1, paras. 27-30.
20 See CAT/OP/NZL/1, paras. 87-88.
21 Ibid., paras. 53-57, 66-67 and 91-97; and A/HRC/30/36/Add.2, paras. 63-66.
22 See CAT/C/NZL/CO/6, para. 13; and CAT/OP/NZL/1, paras. 35-36.
23 See A/HRC/30/36/Add.2, para. 39.

seekers is used only as a last resort and, where necessary, for as short a period as possible, and how it will further implement alternatives to detention.[24] Please comment on reports that the State party is using the prison system to detain asylum seekers and irregular migrants.[25]

24. Please provide information on the procedural and substantive safeguards that are applicable in situations of involuntary or non-consensual commitment of persons with disabilities on health-care grounds.[26] Please specify the number of persons deprived of liberty in psychiatric hospitals and in other institutions for persons with psychosocial disabilities, including care homes. What is the situation with regard to the use of alternative forms of treatment, such as community-based rehabilitation services and other outpatient programmes? How many people currently receive such alternate forms of treatment?[27]

Articles 12 and 13

25. Please provide statistical data, disaggregated by sex, age, ethnic origin or nationality and place of detention, on complaints of acts of torture or ill-treatment recorded during the reporting period. Please include information on investigations, disciplinary and criminal proceedings, convictions and the criminal or disciplinary sanction applied. Please provide examples of relevant cases and/or judicial decisions.

26. Taking note of the Committee's previous concluding observations (para. 10) and the State party's follow-up replies,[28] please provide detailed information on the measures taken to ensure the institutional and functional independence of the Independent Police Conduct Authority.[29] Please provide information on the measures taken to establish an effective complaints mechanism for persons deprived of their liberty.[30] What concrete measures have been taken to restrict the wide discretion of the Attorney General with regard to prosecutorial decisions for crimes against torture?[31]

27. Please indicate what measures the State party has put in place to ensure that all allegations relating to "Operation Burnham" — a raid of two villages in the Baghlan province in Afghanistan by the New Zealand Defence Forces on 22 August 2010 — will be fully investigated and addressed.

Article 14

28. With regard to the previous concluding observations (para. 19), please provide information on the progress made by the Claims Resolution team and other bodies that can provide compensation, apologies and other remedies in dealing with historic experiences of cruel treatment, and the status of those claims.

29. Please provide information on the steps taken to amend the provisions of the Prisoners' and Victims' Claims (Continuation and Reform) Amendment Act 2013 that might be inconsistent with the aim of the Convention (para. 19 in fine). Please provide information on redress and compensation measures, including the means of rehabilitation ordered by the courts and actually provided to the victims of torture or their families, since the consideration of the previous report. This should include the number of requests for compensation that have been made, the number granted and the amounts ordered and actually provided in each case. Please also provide information on any ongoing reparation programmes, including treatment of trauma and other forms of rehabilitation provided to victims of torture and ill-treatment, and on the material, human and budgetary resources allocated for their effective functioning.

24 See CAT/OP/NZL/1, paras. 22 and 23 (d); CCPR/C/NZL/CO/6, paras. 37-38; and A/HRC/30/36/Add.2, paras. 67-77.
25 See A/HRC/30/36/Add.2, para. 71.
26 Ibid., para. 86.
27 Ibid., paras. 78-88.
28 See CAT/C/NZL/CO/6/Add.1, paras. 9-20.
29 See CAT/C/SR.1292, paras. 25, 28, 37 and 49.
30 See CAT/OP/NZL/1, paras. 44-45.
31 Ibid., paras. 22 and 23 (b).

30. With reference to the Committee's previous concluding observations (para. 20), please provide updated information on any changes to the State party's position on withdrawing its reservation to article 14 of the Convention.[32]

Article 15

31. Please provide information on concrete measures taken to ensure respect, both in law and in practice, for the principle of inadmissibility or evidence obtained through torture. Please provide examples of any cases that have been dismissed by the courts owing to the introduction of evidence or testimony obtained through torture or ill-treatment.

Article 16

32. Please comment on reports of premature surgery and other medical treatment to which intersex children are subjected (see the submissions of Intersex Trust Aotearoa New Zealand, and StopIGM.org and Zwischengeschlecht.org to the Committee against Torture in 2017). Please indicate the number of intersex children who have undergone sex assignment surgery during the reporting period.

Other issues

33. Please provide updated information on the measures taken by the State party to respond to threats of terrorism, and describe if and how those anti-terrorism measures have affected human rights safeguards in law and in practice. Please explain how the State party has ensured that those measures comply with all its obligations under international law, especially the Convention, in accordance with the relevant Security Council resolutions, in particular resolution 1624 (2005). Please provide information on the relevant training given to law enforcement officers, the number of persons convicted under such legislation, the legal safeguards and remedies available to persons subjected to anti-terrorism measures in law and in practice, whether there have been any complaints of non-observance of international standards and the outcome of those complaints.[33]

General information on other measures and development relating to the implementation of the Convention in the State party

34. Please provide detailed information on any other relevant legislative, administrative, judicial or other measures taken since the consideration of the previous report to implement the provisions of the Convention or the Committee's recommendations. Such measures may include institutional developments, plans or programmes. Please indicate the resources allocated and statistical data. Please also provide any other information that the State party considers relevant.

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32 Ibid., paras. 19 and 23 (a).

33 See CCPR/C/NZL/CO/6, paras. 13-14.

Attachment 3 to Cabinet Paper Seventh Periodic report under the Convention against Torture

New Zealand's seventh report under the Convention against Torture and other ill-treatment:

Summary of List of Issues and responsible Ministers and agencies

Issue	Topic	Responsible agencies and Ministers	Paragraphs in the report
2	Incorporation into domestic law and constitutional developments	• MOJ (Minister of Justice)	6-18
3	Rights of people in custody	• MOJ (Minister of Justice) • Police (Minister of Police) • Oranga Tamariki (Minister for Children) • Health (Minister of Health)	19-25
4	National Preventive Mechanism (monitoring agencies under the Optional Protocol)	• MOJ (Minister of Justice)	26-33
5	Violence against women incl. domestic violence	• MOJ (Minister of Justice and Under-Secretary Jan Logie) • Police (Minister of Police)	34-51
6	Trafficking in persons	• MBIE (Minister of Immigration)	52-70
7	Refugees and asylum seekers	• MBIE (Minister of Immigration)	71-80
8	Asylum applications, returns and extraditions, appeals mechanisms	• MBIE (Minister of Immigration) • MOJ (Minister of Justice)	81-89
9	Refoulement/extraditions based on diplomatic assurances	• MFAT (Minister for Foreign Affairs) • MOJ (Minister of Justice)	90-92
10	Determination of statelessness	• DIA (Minister for Internal Affairs)	93-95
11	Criminal jurisdiction	• MOJ (Minister of Justice)	96
12	Extradition treaties	• MFAT (Minister for Foreign Affairs) • MOJ (Minister of Justice)	97
13	Mutual assistance treaties, transfer of evidence	• Crown Law (Attorney-General)	98-99

14	Training of enforcement personnel:	• Police (Minister of Police) • Corrections (Minister of Corrections) • MBIE (Minister of Immigration) • Oranga Tamariki (Minister for Children) • Customs (Minister of Customs)	100-109
15	Non-lethal weapons esp. tasers	• Police (Minister of Police) • Corrections (Minister of Corrections)	110-121
16	Training of judges, prosecutors and medical staff	• MOJ (Minister of Justice/for Courts) • Crown Law (Attorney-General) • Police (Minister of Police) • Health (Minister of Health) • MBIE (Minister of Immigration)	122-128
17	Interrogation and custody rules	• Corrections (Minister of Corrections) • Police (Minister of Police)	129-138
18	Conditions in places of detention, occupancy rates and treatment of detainees, incl: • Reforms of criminal justice system • Prison population • Māori overrepresentation • Pretrial detention • Alternatives to imprisonment • Health care in prisons • Strip searches in prisons • Detention in Police cells • Court cells • Defence Force detention	• MOJ (Minister of Justice/for Courts) • Corrections (Minister of Corrections) • Police (Minister of Police) • Defence (Minister for Defence) • Health (Minister of Health)	139-177
19	Solitary confinement (seclusion and restraint)	• Health (Minister of Health) • Corrections (Minister of Corrections) • Police (Minister of Police) • MOJ (Minister of Justice)	178-199
20	Minors in detention: • Youth Justice • Inconsistencies of treatment/conditions • Mental health and seclusion	• MOJ (Minister of Justice) • Oranga Tamariki (Minister for Children) • Corrections (Minister of Corrections) • Police (Minister of Police) • Health (Minister of Health)	200-233
21	Interprisoner violence	• Corrections (Minister of Corrections)	234-237
22	Deaths in custody	• Police (Minister of Police) • MOJ (Minister of Justice/for Courts) • Corrections (Minister of Corrections) • Health (Minister of Health)	238-254
23	Asylum seekers' detention	• MBIE (Minister for Immigration)	255-261

24	Non-consensual commitment on health-care grounds	• Health (Minister of Health) • Police (Minister of Police) • MOJ (Minister of Justice)	262-285
25	Complaints, investigations and proceedings relating to torture and ill-treatment	• Police (Minister of Police) • Health (Minister of Health) • Corrections (Minister of Corrections) • Oranga Tamariki (Minister for Children)	286-297
26	• IPCA independence • Effective complaints mechanisms • Attorney-General discretion to prosecute	• MOJ (Minister of Justice) • Police (Minister of Police) • Corrections (Minister of Corrections) • Crown Law (Attorney-General) • Health (Minister of Health) • Oranga Tamariki (Minister for Children) • MSD (Minister for Social Development)	298-324
27	Investigation – 'Operation Burnham'	• NZDF (Minister for Defence)	325-328
28	Historic cruel treatment (incl. Royal Commission)	• DIA (Minister for Internal Affairs) • MSD (Minister for Social Development) • Health (Minister of Health)	329-342
29	Redress and Compensation: • Prisoners and Victims Claims Act • Info on redress and compensation • Trauma and rehabilitation measures for victims	• MOJ (Minister of Justice) • Corrections (Minister of Corrections) • Health (Minister of Health) • Oranga Tamariki (Minister for Children)	343-355
30	Reservation to Article 14 (compensation)	• MOJ (Minister of Justice)	356-358
31	Admissibility of evidence	• MOJ (Minister of Justice/for Courts)	359-364
32	Surgery of intersex children	• Health (Minister of Health)	365-366
33	Anti-terrorism measures and human rights	• DPMC (Prime Minister)	367-373
n/a	Tokelau	• MFAT (Minister of Foreign Affairs)	Appendix

SWC-19-MIN-0015

Cabinet Social Wellbeing Committee

Minute of Decision

Seventh Periodic Report under the Convention against Torture

Portfolio **Justice**

On 13 March 2019, the Cabinet Social Wellbeing Committee:

1 **noted** that New Zealand is required to submit its seventh periodic report under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to the Committee against Torture by 15 May 2019;

2 **approved** the draft seventh periodic report (including appendices) under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, attached to the submission under SWC-19-SUB-0015, for release for public consultation, subject to any minor editorial changes that the Minister considers to be appropriate;

3 **authorised** the Minister of Justice, in consultation with relevant Ministers, to approve the final version of New Zealand's seventh periodic report (including appendices) under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Jenny Vickers
Committee Secretary

Present:
Rt Hon Jacinda Ardern
Rt Hon Winston Peters
Hon Kelvin Davis
Hon Phil Twyford
Hon Chris Hipkins
Hon Andrew Little
Hon Carmel Sepuloni (Chair)
Hon Dr David Clark
Hon Stuart Nash
Hon Jenny Salesa
Hon Tracey Martin
Hon Willie Jackson
Hon Aupito William Sio
Michael Wood MP
Jan Logie MP

Officials present from:
Office of the Prime Minister
Department of the Prime Minister and Cabinet
Office of the Chair of SWC
Officials committee for SWC

Hard-copy distribution:
Minister of Justice