



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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English only

Committee against Torture

**Concluding observation on the sixth periodic report
of New Zealand**

Addendum

**Information received from New Zealand in follow-up
to the concluding observations***

[Date received: 3 June 2016]

* The present document is being issued without formal editing.



1. In May 2015, the Committee against Torture (the Committee) adopted concluding observations (CAT/C/NZL/CO/6) on New Zealand's sixth periodic report (CAT/C/NZL/6). The Committee requested follow-up information on three of its recommendations within a year. These recommendations relate to the National Preventative Mechanism (para. 9 of the concluding observations), the Independent Police Conduct Authority (para. 10) and seclusion, solitary confinement and historic claims of abuse (para. 15). This report provides further information about these topics.

National Preventative Mechanism

2. The Committee recommended New Zealand to:

- Support the National Preventative Mechanism (NPM) in developing and maintaining a collective identity through, inter alia, joint visits and joint public reports, harmonized working methods, shared expertise and enhanced coordination.
- Increase NPM's funding and ensure that they are staffed appropriately.

Enhanced coordination

3. The Human Rights Commission (HRC) is the Central NPM. The other four NPMs are: the Office of the Ombudsman, the Independent Police Conduct Authority (IPCA), the Office of the Children's Commissioner (OCC) and the Inspector of Service Penal Establishments of the Office of the Judge Advocate General. The HRC role entails coordinating with the other NPMs to identify systemic issues, convening regular meetings and assisting with NPM monitoring.

4. NPMs being led by the Human Rights Commission, are working well together.

Funding

5. The HRC, IPCA and the OCC are independent Crown entities and are funded through the budget vote for different Government agencies. They negotiate their funding through the regular budget process, which considers the totality of their functions including those under the Optional Protocol on the Convention Against Torture (OPCAT). Increases in funding may be contingent to other government initiatives and, when funding is not available, NPMs are encouraged to explore ways to make the best use of current resources.

6. The Office of the Ombudsman currently receives \$574,000 for its OPCAT monitoring activities. This includes an increase of \$257,000 in 2014/2015. This has enabled it to employ two additional investigators and contract specific expertise to assist with inspections and monitoring under OPCAT and the Convention on the Rights of Persons with Disabilities. The budget also included an additional \$22,000 for inspections and monitoring generally. The Office of the Ombudsman is now able to visit every facility at least once every year but does not inspect the whole site. It targets high risk areas such as management units, at risk units and special needs units.

7. The 2016 Budget allocated an additional \$1.2 million to the IPCA over four years to address an increasing number of complaints and to undertake new prevention initiatives. The IPCA also developed the new National Standards designed to cover both the physical infrastructure and the daily management and care of detainees in custodial facilities. The intention is that police will report on their own compliance with these Standards on both a national and District-by-District basis, and report to the IPCA annually. This reduces the

need for direct inspections and enables the systematic identification of custodial facilities where management and care is falling below the required standard.

8. The OCC has shifted its schedule of residence visits from annual to an 18-month cycle to cope with the current financial constraints. The level of future funding increases could depend on changes to Child, Youth and Family (CYF). In April 2015, the Minister for Social Development established a panel to review and develop a plan to modernise CYF. The review focuses on the extent to which CYF's current operating model improves outcomes for children and young people, and any wider changes required to legislation and services provided by other agencies. The review could have a significant effect upon the role and responsibilities of the OCC and its associated funding (including those relating to OPCAT). The outcome of this process will not be known until late 2016.

Independent Police Conduct Authority

9. The Committee recommended New Zealand to ensure that the IPCA is fully independent and equipped with a broader mandate.

Independence

10. The IPCA makes its findings based on the facts and the law. It does not answer to the Police or the Government over those findings. In this way, its independence is similar to that of a Court. There are three aspects to IPCA's independence.

(a) Legislative independence

11. The law requires the IPCA to act independently in performing its statutory functions and duties such as investigating complaints and incidents involving death or serious injury.

12. The IPCA is an independent Crown entity under the Crown Entities Act 2004. This is the same status as the Human Rights Commission which has "A" accreditation status from the International Coordinating Committee for National Human Rights Institutions and means that there can be no political involvement in its operations. A responsible Minister of an independent Crown entity may not direct the entity to have regard to or to give effect to a government policy unless specifically provided in another Act.

13. Additionally, checks and balances put in place by the New Zealand system apply which means that Parliament would hold any Minister or Government to account if they interfered with the operations of an independent body like the IPCA.

(b) Operational independence

14. The IPCA must be chaired by a Judge or a retired Judge, and its decisions and actions reflect that judicial independence.

15. When the IPCA receives a complaint it has complete discretion to carry out its own investigation, or refer the matter to the Police for investigation under IPCA's oversight. If a complaint is referred to the Police for investigation, IPCA can set the conditions of the investigation and take steps to ensure that it is properly resolved. This may include directing or actively overseeing the Police investigation, or reviewing or auditing the Police investigation once it is completed. IPCA may also decline to take action on a complaint (for example, if the complaint is very minor or outside IPCA's jurisdiction).

16. Its investigators investigate directly the most serious complaints and incidents, such as those involving fatalities or allegations of serious misconduct. The integrity of this work

is assured through the creation of investigation teams and through oversight from the Manager: Investigations and Reviews, the Manager: Report Writing, the Group Manager: Operations and IPCA Chair.

(c) The perception of independence

17. IPCA board releases all reports of IPCA's investigations unless there is an overriding private interest in maintaining confidentiality. This will be decided on a case-by-case basis. Summary reports of the findings of IPCA's independent investigations are available on its website, with private details kept anonymous where necessary. IPCA maintains a register of conflicts of interest and has systems in place to manage conflicts when they arise.

Mandate

18. IPCA is unable to bring a criminal prosecution against any alleged perpetrator of a crime committed by a Police officer. The Police must make that determination, guided by the Solicitor-General's Prosecution Guidelines. These guidelines require that there be evidential sufficiency (ie that a conviction is more likely than not to be obtained as a result of prosecution) and that it be in the public interest to prosecute.

19. IPCA believes that it has the greatest impact on Police practice by working cooperatively with the Police. If it could prosecute, the relationship would become more adversarial and officers would be more inclined to "close ranks". In practice, in cases that IPCA has independently investigated, there is an expectation of consultative decision-making, and the Police are therefore expected to, and generally do, consult IPCA before making a decision whether or not to prosecute.

20. IPCA is also able to recommend to the Commissioner of Police that a prosecution be brought. If that recommendation is not acted on, IPCA is required by statute to draw the matter to the attention of the Minister of Police and the Attorney-General, and is able to transmit a report to the Attorney-General for tabling in Parliament. IPCA therefore has powerful levers to ensure that its views are properly taken into account.

Seclusion, solitary confinement and allegations of ill-treatment

21. The Committee recommended New Zealand to:

- Limit the use of solitary confinement and seclusion.
- Prohibit its use for juveniles, persons with disabilities, pregnant women, women with infants and breastfeeding mothers.
- Compile and publish disaggregated data on the use of solitary confinement and seclusion.
- Conduct investigations into all allegations of ill-treatment, prosecute the perpetrators and provide effective remedies to the victims (in the context of Lake Alice hospital investigations).

Use of seclusion in health-care facilities

22. Under New Zealand's mental health legislation, seclusion may only occur "only where, and for as long as, it is necessary for the care or treatment of the patient, or the protection of other patients." New Zealand's national standards for the use of seclusion

state that it shall not be used for punitive reasons or to modify unwanted behaviour, and may only be used to manage safety.

23. Ministry guidelines for mental health services in seclusion state that seclusion should only be used when no other safe and effective intervention is possible. Seclusion should not occur as part of a routine admission or therapeutic procedure, or be administered as discipline, or as a replacement for adequate levels of staff or resources.

24. Potential physical and psychological effects must be carefully considered before a decision to place a person in seclusion. Observations to monitor the person's physical wellbeing should be continuous, with the longest interval between recorded observations being 10 minutes. Attempts to enter the seclusion room to assess the person's physical wellbeing should occur at least once every two hours.

25. Mental health legislation requires every mental health service to keep a register of seclusion and restraint. District inspectors are lawyers appointed under mental health legislation to inspect mental health services and receive complaints from people subject to compulsory mental health treatment. They have full and unrestricted access to seclusion registers and they are required to visit inpatient mental health services at least monthly and report to the Director of Mental Health.

26. The Ministry of Health reports annually on the use of seclusion, broken down by: service area;¹ age; sex; ethnicity; number of people secluded; number of hours spend in seclusion; and type of service (adult services and forensic mental health services). Trends in the use of seclusion over time are also reported. Data on the use of seclusion nationally is published on the Ministry of Health website and is disaggregated by year, sex and ethnicity.

Use of solitary confinement in prisons

27. Cell confinement may only be ordered following a disciplinary offence, and can only be ordered by a hearing adjudicator (for a maximum of 7 days), or a visiting Justice (for a maximum of 15 days). When ordered by a hearing adjudicator, it may be appealed to the visiting Justice. Judicial review is available, and the offender may seek recourse from the inspector of Corrections, and the Office of the Ombudsman.

28. Prisoners may also be segregated from other prisoners for various reasons including that they pose a risk to other prisoners. However this can only be ordered if—in the opinion of the prison manager/director or authorized delegate—it is absolutely necessary to reduce the risk. Furthermore the segregation should generally not be total segregation. It should only be partial (i.e. some association from certain other prisoners should still be allowed) unless there is an unavoidable need for total segregation. Any segregation order may be revoked at any time by the Chief Executive or a visiting Justice and expires after 14 days unless renewed by the Chief Executive. If the order is renewed it must be reviewed monthly by the Chief Executive and expires after 3 months unless extended by a visiting Justice who must review it every three months.

29. There is no statutory prohibition of cell confinement with respect to certain types of prisoners, however the appropriateness of such a measure for these people would be something that the adjudicator, visiting Justice or prison manager/director would take into account.

30. Data on cell confinement and segregation is stored and available if requested by the public, but not published.

¹ New Zealand's publicly funded health services are delivered regionally by 20 district health boards.

Investigations of historic claims of abuse

31. The nearly 200 claims about ill-treatment at Lake Alice hospital relate to the civil resolution process. These were confidential to the individuals concerned. However, individuals were able to complain to the Police if they wished to do so. Following complaints, the Police made inquiries in 2009-10 about whether there was sufficient evidence to lay charges against the alleged perpetrators. The Police decided not to lay charges.
