



Tari o Te Kaiwhakawā Ihorei Whānui
O Te Ope Kātua O Aotearoa |
Office of the Judge Advocate General
of the Armed Forces



Aotearoa

New Zealand's Fourth Universal Periodic Review

Submission of the Aotearoa New Zealand OPCAT National Preventive Mechanisms

11 October 2023

Since 2006, Aotearoa New Zealand has had a multi-body National Preventive Mechanism (**NPM**) which is mandated to carry out the preventive functions established under articles 1 and 3 of the Optional Protocol to the Convention against Torture (**OPCAT**). This mandate is reflected in New Zealand's domestic legislation through the Crimes of Torture Act 1989 (**COTA**).

Te Kāhui Tika Tangata | New Zealand Human Rights Commission is New Zealand's designated Central NPM (**CNPM**) under OPCAT and, domestically, the COTA. In addition to the Commission as CNPM, the following agencies within New Zealand's NPM are designated to carry out a system of regular visits to places where people are deprived of their liberty:

- (a) Tari o te Kaitiaki Mana Tangata | Ombudsman New Zealand – monitors prisons and places where people are otherwise in the custody of Ara Poutama Aotearoa | Department of Corrections, health and disability places of detention, immigration detention facilities, residences established under section 114 of the Public Safety (Public Protection Orders) Act 2014, and court facilities;
- (b) Mana Whanonga Pirihimana Motuhake | Independent Police Conduct Authority – monitors places where people are held in the custody of Nga Pirihimana o Aotearoa | New Zealand Police;
- (c) Mana Mokopuna | Children and Young People's Commission – monitors the treatment of children and young people in detention including in care and protection and youth justice residences, community-based remand care homes, and health and disability facilities; and
- (d) Inspector of Service Penal Establishments – monitors Te Ope Kātua o Aotearoa | New Zealand Defence Force detention facilities.

Full details of the NPMs' monitoring designations can be found here: <https://gazette.govt.nz/notice/id/2023-go2676>

Annual Reports on the NPMs' activities can be found here: <https://tikatangata.org.nz/our-work/monitoring-places-of-detention>.

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I. Introduction

1. The Aotearoa New Zealand National Preventive Mechanisms (**New Zealand NPMs**) provide this joint submission for Aotearoa New Zealand's (**New Zealand**) fourth cycle Universal Periodic Review (**UPR**). Individual NPMs have also provided independent submissions for the fourth cycle UPR.
2. This submission does not address every recommendation from New Zealand's third cycle UPR in January 2019, but instead comments on a selection of issues of key importance to the New Zealand NPMs, as follows:
 - (a) Māori in detention;
 - (b) Minimum standards for humane treatment of detained persons;
 - (c) Mental health in detention; and
 - (d) Training and education of law enforcement and custodial personnel.
3. The NPMs seek to assist States involved in New Zealand's fourth cycle UPR in light of the vital correlation between deprivation of liberty and the risk of human rights violations. The New Zealand NPMs' recommendations are outlined in **Annex 1** and their contact details are listed in **Annex 2**.

II. Māori in detention

4. **The New Zealand Government (Government) has taken some steps to implement recommendations relating to Māori in detention.**
5. The Government accepted four recommendations from the third cycle UPR to:
 - (a) prevent and combat discrimination in the criminal justice system;²
 - (b) enhance the rights of Māori and increase support to Māori prisoners;³
 - (c) put an end to discrimination against Māori;⁴ and
 - (d) ensure all prisoners receive equal treatment in accordance with minimum standards for the treatment and conditions of persons in detention.⁵

Te Tiriti o Waitangi

6. In its response to the third cycle UPR recommendations, the Government acknowledged Te Tiriti o Waitangi/ Treaty of Waitangi (**Te Tiriti**),⁶ is New Zealand's founding constitutional document as

¹ New Zealand Government "Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review" (UN Doc. A/HRC/41/4/Add.1, 17 June 2019) at [23] to [28].

² United Nations Human Rights Council (UNHRC) "Report of the Working Group of the University Periodic Review of New Zealand - Third cycle" (UN Doc. A/HRC/41/4, 1 April 2019), recommendations at [122.63] (Indonesia) and [122.64] (Italy).

³ Ibid, recommendation at [122.66] (Ireland).

⁴ Ibid, recommendation at [122.65] (Bolivarian Republic of Venezuela).

⁵ Ibid.

⁶ It is acknowledged there are two texts with different meanings.

the 1840 agreement between Māori and the British Crown.⁷

7. Through its detaining agencies, the Government has obligations to provide culturally appropriate conditions for Māori in detention, to better support their wellbeing and rehabilitation.⁸ There currently appears to be a willingness but also uncertainty around what is expected and required of detention facilities to implement the Government's Te Tiriti obligations and to incorporate tikanga (Māori customs and protocols) and Te Ao Māori (Māori world view), and how these factors may guide the conditions and treatment experienced by people deprived of their liberty.
8. There is some developing Te Tiriti jurisprudence about the obligations on Oranga Tamariki | Ministry for Children,⁹ and Ara Poutama | Department of Corrections (**Corrections**), but it is not yet comprehensive. There does not appear to be any specific guidance for other places where people may be deprived of liberty, such as health and disability places of detention. In addition, some places of detention are privately run, which may raise other issues regarding any Te Tiriti obligations. Ultimately, the Government has a developing and not yet consistent view on how Te Tiriti and tikanga should apply in places of detention.

Systemic issues

9. In 2018 the Ministry of Justice commenced its work programme *Hāpaitia te Oranga Tangata: Safe and Effective Justice* to consider ways to improve systemic shortcomings in the criminal justice system. The *Safe and Effective Justice Advisory Group Uepū Hāpai i te Oranga* produced two reports following over a year of leading public discussion and engaging with communities nationwide about improvements needed to the justice system.¹⁰ Their final report found the current system is failing on several fronts and called for urgent and fundamental change. Its recommendations included a commitment to transform the system, a whole of government vision, and a 'by Māori for Māori' approach, including establishing a power sharing governance model.
10. Ināia Tonu Nei is a Māori movement formed in response to the lack of Māori voice in the 2018 *Safe and Effective Justice Summit*. The group was supported by the Government to convene a hui (meeting) among Māori with criminal justice experience. This produced the *Ināia Tonu Nei* report in 2019,¹¹ calling for urgent change and recommending that the justice system be decolonised and remodelled in partnership between Māori and the Crown.
11. The Ministry of Justice website reports that the *Hāpaitia Legacy* continues to be reflected in initiatives including: Police Iwi Community Panels, Te Ao Mārama District Court model, Corrections' *Hōkai Rangī* strategic plan, and Joint Venture on Family and Sexual Violence. While these are positive individual initiatives, overall progress on the urgent and fundamental change called for by the *Hāpaitia* review is less clear.

⁷ New Zealand Government, UN Doc. A/HRC/41/4/Add.1, above n 1, at [57].

⁸ Article 3 of Te Tiriti affords tangata whenua (people of the land) ngā tikanga katoa rite tahi (all the rights and privileges) on an equal basis with tangata Tiriti (New Zealanders of non-Māori origin), while article 4 protects te retinga Māori (Māori customs).

⁹ Oranga Tamariki Act 1989, s 7AA.

¹⁰ Uepū Hāpai i te Oranga *He Waka Roimata – First report* (2019) available: <https://www.justice.govt.nz/assets/Documents/Publications/He-Waka-Roimata-Report.pdf>. Uepū Hāpai i te Oranga *Tūruki! Tūruki! Move Together: Second report of Te Uepū Hāpai i Te Ora Safe and Effective Justice Advisory Group* (December 2019) available: <https://www.justice.govt.nz/assets/turuki-turuki.pdf>.

¹¹ Ministry of Justice, *Ināia Tonu Nei: Hui Māori Report* (July 2019) available: <https://www.justice.govt.nz/assets/d8s653-Inaia-Tonu-Nei-Hui-Maori-English-version.pdf>.

12. Recently, the Waitangi Tribunal¹² has instigated Kaupapa (thematic) Inquiries to examine nationally significant and systemic issues affecting Māori. The WAI3060 Te Rau o te Tika: Justice System Kaupapa Inquiry is currently examining allegations relating to:¹³
- (a) discrimination against Māori in the statutory and institutional framework for the administration of justice in colonial and modern times;
 - (b) institutional racism and bias in the policy and practice of justice sector organisations;
 - (c) discrimination against Māori in policing policy and practice; and
 - (d) prison conditions and treatment of Māori in prison (both in pre-trial detention and sentenced).
13. The findings and recommendations resulting from the WAI3060 Inquiry will likely provide comprehensive advice to the Government’s justice agencies about how they can transform their structure and operations to better comply with Te Tiriti and improve Māori outcomes.

Te Tiriti issues across the monitoring estate

14. Despite Government initiatives, Māori continue to be over-represented at all stages of New Zealand’s criminal justice and State care systems. The New Zealand NPMs recognise the over-representation of Māori as a percentage of those deprived of liberty as a systemic issue across the majority of facilities within their monitoring mandate including police custody, prisons, health and disability facilities, child and youth care and protection, youth justice and mental health facilities, and the New Zealand Defence Force (NZDF) Service Correctional Establishments (SCE). Māori currently represent 37 percent of people proceeded against by Police, 45 percent of people convicted, and 53 percent of people in prison, despite representing only 16.5 percent of the national population.¹⁴ In addition, 65 percent of women in New Zealand’s correctional facilities are Māori.¹⁵
15. Within places of detention, Māori also experience inequitable treatment. For example, the Chief Ombudsman has often highlighted and made recommendations to address the disproportionate rate of seclusion of Māori service users in many acute inpatient and forensic mental health services.

Culturally unsafe practices

16. The Chief Ombudsman’s OPCAT reports have raised concerns about cultural safety. In his monitoring of health and disability facilities, these concerns have included the transfer of service

¹² The Waitangi Tribunal is charged with investigating and making recommendations on claims brought by Māori relating to actions or omissions of the Government in relation to obligations under Te Tiriti o Waitangi.

¹³ Ministry of Justice, *Te Rau o Te Tika: Justice System Kaupapa Inquiry (WAI3060)* available: <https://www.justice.govt.nz/justice-sector-policy/justice-system-kaupapa-inquiry/>.

¹⁴ Ministry of Justice “Hāpaitia te Oranga Tangata | Safe and Effective Justice” (2 February 2023) available: <https://www.justice.govt.nz/justice-sector-policy/key-initiatives/hapaitia-te-oranga-tangata/#:~:text=M%C4%81ori%20are%20overrepresented%20at%20every,of%20the%20New%20Zealand%20population>. See also Department of Corrections, Prison facts and statistics – June 2023 available: https://www.corrections.govt.nz/resources/statistics/quarterly_prison_statistics/prison_stats_june_2023.

¹⁵ Sophie Cornish, *Māori even more over-represented in prisons, despite \$98m strategy*, Stuff New Zealand (1 May 2022) available: <https://www.stuff.co.nz/national/128306867/mori-even-more-overrepresented-in-prisons-despite-98m-strategy>. See also International Working Group for Indigenous Affairs, *The Indigenous World 2022: Aotearoa (New Zealand)* (1 April 2022) available: https://iwgia.org/en/aotearoa-new-zealand/4685-iw-2022-aotearoa-new-zealand.html#_edn8.

users to other services at short notice and without involvement of cultural support providers; service users being admitted into mental health units through the garage; and a lack of appropriate spaces in facilities to hold welcome ceremonies.¹⁶

17. With regard to monitoring prisons, the Chief Ombudsman stated in his report from his inspection of Waikeria Prison that:¹⁷

Tāne¹⁸ [in the High Security Complex] were required to receive all meals, other than lunch, in their cells due to the yard-to-cell regime. This meant tāne ate meals on their bunks in close proximity to an uncovered toilet. Tāne having to eat in such close proximity to the toilet is, in my opinion, both unsanitary and culturally inappropriate. This arrangement does not align with the Department's Hōkai Rangi strategy relating to the development of minimum 'Manaaki Standards'.¹⁹

Access to cultural programmes and kaupapa Māori services

18. The Chief Ombudsman has observed a lack of access to cultural support and provision of cultural programmes for people in custody. For example, in his report of his 2020 inspection of Auckland Prison, the Chief Ombudsman found the prison did not actively provide cultural support, and there was no evidence of a coordinated approach or institutional commitment to cultural provision.²⁰
19. People in custody have frequently raised concerns with the Chief Ombudsman's Inspectors about access to cultural support and programmes, specifically around te reo Māori and tikanga. The Chief Ombudsman has made multiple recommendations to Corrections in this regard. The Chief Ombudsman has often expressed the view that prison management should build and maintain relationships with iwi to ensure greater support is available to Māori, and to ensure the delivery of culturally appropriate services in prisons.
20. In his monitoring of health and disability places of detention, the Chief Ombudsman has found several instances where there had been minimal assessment of residents' cultural and spiritual needs, and where opportunities existed to incorporate Te Ao Māori perspectives into the care and support of service users to a greater degree. The Chief Ombudsman has highlighted that recognition of cultural identity, including participation in whānau (family) and wider Māori communities, is central to enhanced wellbeing for Māori service users.²¹ The Chief Ombudsman has made several related recommendations, specifically that services prioritise, implement and protect an increased range of kaupapa Māori practices and programmes, and that day-to-day running of services incorporate tikanga Māori and cultural support.

¹⁶ Called pōwhiri or mihi whakatau in te reo Māori.

¹⁷ Ombudsman New Zealand. 2020. *Final report on an unannounced inspection of Waikeria Prison under the Crimes of Torture Act 1989*. Wellington: Ombudsman New Zealand. Available: <https://www.ombudsman.parliament.nz/resources/final-report-unannounced-inspection-waikeria-prison-under-crimes-torture-act-1989>.

¹⁸ Tāne is the term that was used by the prison to describe people detained there at the time of inspection. Tāne, in te reo Māori, means man/male.

¹⁹ Manaaki Standards for people in the care and management of the Department, which includes standards around health and hygiene.

²⁰ At the time of this inspection, approximately 53 percent of the prison population identified as Māori. See Ombudsman New Zealand. 2020. *Final report on an unannounced inspection of Auckland Prison under the Crimes of Torture Act 1989*. Wellington: Ombudsman New Zealand. Available: <https://www.ombudsman.parliament.nz/resources/final-report-unannounced-inspection-auckland-prison-under-crimes-torture-act-1989>.

²¹ Ratima K. and Ratima M. 2007. Māori Experience of Disability and Disability Support Services. In B. Robson & Harris R. (eds.) *Hauora: Māori Standards of Health IV: A study of the years 2000-2000*. Wellington: Te Rōpū Rangahau Hauora a Eru Pōmare. Available: <https://www.otago.ac.nz/wellington/otago067751.pdf>.

III. Minimum standards for humane treatment

21. **The Government has taken steps to implement recommendations about the conditions and treatment of persons in detention, although the impacts are yet to be seen.**
22. The Government accepted four recommendations from the third cycle UPR to:²²
 - (a) ensure all prisoners receive equal treatment and that conditions in prisons and detention centres comply with the United Nations Standard Minimum Rules for the Treatment of Prisoners (**Mandela Rules**);²³
 - (b) carry out further work to reduce prison overcrowding;²⁴ and
 - (c) take immediate steps to combat the use of solitary confinement in all health care facilities and places of detention.²⁵

Conditions and treatment

Impacts of COVID-19

23. The Government's response to the COVID-19 pandemic had a significant impact on the conditions and treatment of persons in detention across New Zealand. Detaining agencies nationwide implemented various measures to prevent the spread of COVID-19 including: limiting movements in and out of places of detention; minimising detention numbers; implementing quarantine or isolation protocols; and, in some instances, introducing video calls to whānau and support services.

Police custody

24. New Zealand's public health response to COVID-19 led to a reduction in the number of people being arrested and detained by New Zealand Police.²⁶ Whilst restrictions on domestic travel and other movements contributed to this decline, Police also implemented temporary policies to limit the number of arrests and detentions made. Police officers were encouraged to find alternative ways to manage low level offences without bringing people into Police custody. The Independent Police Conduct Authority (**IPCA**) considers that many of the practices implemented by Police during COVID-19 restrictions to divert people (especially vulnerable detainees) away from custody could be retained and become part of normal operational practice.
25. Another impact of COVID-19 public health restrictions was increased use of Audio-Visual Links (**AVL**) for court appearances. Detainees would appear at court remotely by video link from Police custody units and Corrections facilities. This reduced the need to transfer detainees to court and would often avoid detainees having to spend additional nights in Police cells. Many older Police

²² New Zealand Government, UN Doc. A/HRC/41/4/Add.1, above n 1 at [23] to [28] and [41] – [42].

²³ UNHRC, UN Doc. A/HRC/41/4 above n 2, recommendation at [122.65] (Bolivarian Republic of Venezuela).

²⁴ Ibid, recommendations at [122.67] (United States of America) and [122.68] (Belarus).

²⁵ Ibid, recommendation at [122.99] (Syrian Arab Republic).

²⁶ Numbers of Police custody records created (per calendar year):

Year - Total records created

2018 - 125,701

2019 - 128,278

2020 - 110,719

2021 - 88,232

2022 - 89,594.

cells do not meet the IPCA's expectations and are not suitable for holding detainees for longer periods. Detainees on remand being held in Police cells also do not have the same entitlements as those being held in the custody of Corrections.

26. Now that COVID-19 restrictions have ended, the use of AVL has also declined. The IPCA believes there are many circumstances when it would be appropriate to provide detainees with the option to appear in court by video link, especially for shorter administrative hearings. Whilst this is a matter for the judiciary, more could be done to ensure presiding judges are aware of potential negative outcomes for detainees who are being transported for long distances and then held in poorer conditions in many of the older Police custodial facilities.

Prisons

27. Both the Human Rights Commission and the Chief Ombudsman have expressed concerns to Corrections regarding the proportionality of some COVID-19 related restrictions and their impacts on the human rights of people in custody, particularly regarding:

- (a) minimum time spent out of cells and access to exercise in the fresh air, contrary to rules 23(1), 43(1), 44 and 45(1) of the Nelson Mandela Rules;
- (b) safe in-person visits and access to alternative methods of communication, contrary to rules 3, 58(1)(b) and 61(1) of the Nelson Mandela Rules; and
- (c) continued access to rehabilitation and reintegration services, contrary to rules 4(2), 104, and 105 of the Nelson Mandela Rules.

28. These issues have been further exacerbated and prolonged by acute staffing shortages in New Zealand prisons. As at August 2023, in-person visits were still not fully occurring in several prisons across the country,²⁷ and a substantial number of prisoners across several units continued to be denied access to one hour of outdoor physical exercise, provided for in law, over consecutive weeks.

29. There has also been mandatory transfers of prisoners to sites outside their home region, without a right of review. In some cases, these transfers resulted in a discontinuance of prisoner's work, education and rehabilitation programmes, and a disconnection between Māori prisoners and their whānau (cultural ties to ancestral land). In August 2023, the New Zealand High Court found Corrections had breached the rights of female prisoners to non-discrimination when making these transfers because it: significantly reduced the ability to sentence women closer to their whānau and communities; closed the only residential drug treatment programme available to women in New Zealand; and made transfers irrespective of female prisoners' personal circumstances (but took these into account for male prisoners).²⁸

Children and young person's places of detention

30. Mana Mokopuna | Children and Young Peoples' Commission found that COVID-19 amplified the systemic issues around staffing shortages and inadequate facilities in care and protection, youth justice and mental health facilities for children and young people in New Zealand. Given significant pressures on residential facility staff during the pandemic response, Mana Mokopuna

²⁷ See Ara Poutama | Department of Corrections, *Staying connected with people in prison* (2 August 2023) available: https://www.corrections.govt.nz/our_work/in_prison/staying_connected_with_people_in_prison/visits/prison_visit_updates.

²⁸ [*Wallace v Chief Executive of the Department of Corrections*](#) [2023] NZHC 2248.

| Children and Young People’s Commission focussed on interviewing children and young people and understanding their experience of the lockdown environment. Mana Mokopuna | Children and Young People’s Commission found negative impacts on children and young people’s access to programmes, education, and external visitors (including independent advocates Voyce Whakarongo Mai).

NZDF detention facilities

31. Over the 2019 to 2021 period, the Inspector of Service Penal Establishments (**IPSE**) found the SCE had a robust programme to meet the prevailing requirements issued by the Ministry of Health and NZDF with respect to COVID-19. The SCE was able to adapt the programme depending on the restrictions imposed. Detainees were tasked with developing their own personal training programmes, under supervision from the SCE’s resident Instructor. External specialist support was provided including padre, physio sessions and visiting officer interviews were conducted via video conferencing. Daily access to video conferencing was also provided for contact with whānau and friends. This aspect of regular contact appeared to have positive results on the rehabilitation programme.

Prison over-crowding

32. There remains a disproportionately high number of people being held on prolonged pre-trial detention in New Zealand. As at March 2023, approximately 44 percent of the prison population was being held on remand, including remand accused and remand convicted prisoners.²⁹ In the year ended December 2022, Māori made up 56 percent of the remand prison population, despite representing only 16.5 percent of the country’s total population.³⁰ More than half of the female prison population are being held on remand.³¹

33. The high population of people on remand places pressure on the prison system, contributing to over-crowding.³² Corrections has advised that the transitional nature of the remand environment is often volatile, which has led to higher rates of the use of force against remand prisoners compared with the sentenced prisoner population. All people held on remand in New Zealand are automatically subject to a high security classification, regardless of the nature of their alleged offending. They are also restricted in access to educational and rehabilitative programmes and services.

Use of force and restrictive measures

34. The Human Rights Commission has commissioned three reports on practices related to solitary confinement and restraint in several of New Zealand’s detention settings (including prisons and police cells, health and disability facilities, and children and youth residences).³³

²⁹ Ara Poutama | Department of Corrections ‘Prison facts and statistics – March 2023’ available: https://www.corrections.govt.nz/resources/statistics/quarterly_prison_statistics/prison_stats_march_2023. As at March 2023 3,689 prisoners were awaiting trial, out of a total prison population of 8,294.

³⁰ Ara Poutama | Department of Corrections ‘Prison statistics – Remand and sentenced snapshot’ available: https://www.corrections.govt.nz/resources/statistics/quarterly_prison_statistics. As at December 2022, people were held on remand for a total of 14,145 offences, with 7,992 of these offences representing Māori.

³¹ Above n 29. There was a total of 110 women on remand (21% of female prison population) in March 2012 compared with 273 (54%) in March 2023.

³² Contrary to the Nelson Mandela Rules, rule 113.

³³ These practices are known as ‘seclusion’ in health and disability settings, ‘segregation’ in prisons, and ‘secure care’ in children and young people’s care and protection and justice residences.

35. In 2016, the Commission invited Dr Sharon Shalev to undertake a review of practices related to solitary confinement and restraint in New Zealand's places of detention. Dr Shalev's 2017 report, *Thinking Outside the Box?: A review of seclusion and restraint practices in Aotearoa New Zealand*³⁴ revealed the high use of seclusion, segregation, secure care and restraint in New Zealand, and an overrepresentation Māori in seclusion and in prison segregation units.³⁵ Following the report's release, all agencies acknowledged Dr Shalev's recommendations. Manatū Hauora | Ministry of Health and Oranga Tamariki committed to implementing most, and Corrections committed to implementing some, of the recommendations.
36. In 2020, *Time for a Paradigm Shift: A follow-up review of seclusion and restraint practices in Aotearoa New Zealand*³⁶ was published to provide a follow-up to the 2017 report. The follow-up report indicated that while there had been positive developments and strong commitments from the detaining agencies to reduce the use of practices related to solitary confinement, they continue to be embedded in their practices. Dr Shalev found the overall picture disappointing, with ongoing issues that had not been addressed, such as:³⁷
- (a) seclusion, segregation and secure care continue to be used too often, for too long, and not always with clear justification;
 - (b) the use of seclusion, segregation and secure care remain disproportionately high with Māori and Pacific Peoples across the board; and
 - (c) data on the use of force and restraint is concerning.
37. Many of the other issues identified in the 2017 review persist, including: risk-averse policies and practices; impoverished regimes; austere material conditions and some un-fit for purpose accommodation; lack of individual autonomy; and over-reliance on staff availability and good will.
38. In July 2019, Corrections established a new Persons of Extreme Risk Directorate (**PERD**) and a Prisoners of Extreme Risk Unit (**PERU**). Although located within the secure perimeter of Auckland Prison, the PERU is considered a separate custodial operation managed by the PERD. The PERD and PERU are not expressly set out in legislation, and little information has been made publicly available about the PERD and how it operates.³⁸ All prisoners in the PERU are subject to segregation orders in a 'specialised custodial environment'.³⁹ It is a well-established principle

³⁴ Dr Sharon Shalev, *Thinking Outside the Box?: A review of seclusion and restraint practices in Aotearoa New Zealand* (2017) available: <https://tikatangata.org.nz/our-work/thinking-outside-the-box>.

³⁵ Ibid., at p. 3.

³⁶ Dr Sharon Shalev, *Time for a Paradigm Shift: A follow-up review of seclusion and restraint practices in Aotearoa New Zealand* (2020) available: <https://tikatangata.org.nz/our-work/time-for-a-paradigm-shift>.

³⁷ For example, in health and disability facilities, over a period of 6 months restraints were used 358 times, with 114 of these uses involving prone restraints, including several very lengthy holds – 1,463 minutes in one case, 290, 125 and 100 minutes in others. Ibid., summary at p. 8-9.

³⁸ The PERU was out of scope for the Office of the Inspectorate's thematic inspection, and subsequent report, on separation and isolation in New Zealand prisons; see Office of the Inspectorate, *Separation and Isolation: Prisoners who have been kept apart from the prison population*, 2023. Available: https://inspectorate.corrections.govt.nz/_data/assets/pdf_file/0015/50172/Inspectorate_Separation_and_Isolation_FINAL.pdf at para [14].

³⁹ Petition of Christine McCarthy: Ban prolonged solitary confinement - Department of Corrections, 2021, available: https://www.parliament.nz/en/pb/sc/submissions-and-advice/document/53SCPET_EVI_104223_PET1484/departement-of-corrections-petition-of-christine-mccarthy.

that regimes which are particularly restrictive, or where individuals have been marked out as needing to be managed separately from the general detainee population, present a particular risk of ill-treatment and other human rights violations.⁴⁰

39. Following concerns identified in her *Time for a Paradigm Shift* report regarding the use of solitary confinement and force against women in prison, particularly Māori women, in 2021 Dr Shalev produced *First, Do No Harm: segregation, restraint, and pepper spray use in women's prisons in Aotearoa New Zealand*.⁴¹ The report shines a light on harmful practices in women's prisons in New Zealand. Among Dr Shalev's key findings was the high use of solitary confinement and other punitive practices towards women.
40. Consistent with the findings in Dr Shalev's reports, in June 2023 Te Tari Tirohia | Office of the Inspectorate released a thematic *Separation and Isolation* report, which noted the potential profound and long-lasting physical and psychological effects on prisoners who have been separated from the prison population and are unable to mix with other prisoners.⁴² The report made seven recommendations, which have been accepted by Corrections.
41. In addition, the Chief Ombudsman and Human Rights Commission have jointly raised concerns with Corrections that regulations governing the use of force against New Zealand prisoners do not comply with international human rights law obligations, in particular because they continue to permit the use of pepper spray in response to passive resistance, in confined spaces, and against individuals identified as high risk (such as those with underlying injuries, mental health issues, respiratory conditions, or pregnancy), as well as the use of restraints following the deployment of pepper spray.

Material conditions of places of detention

Health and disability places of detention

42. The material conditions of health and disability places of detention continue to be of serious concern to the Chief Ombudsman. While a number of new health and disability facilities have been commissioned since 2019, the Chief Ombudsman has raised multiple concerns regarding poor material conditions and outdated facilities that negatively impact on the wellbeing of people deprived of liberty.
43. Specific concerns raised by the Chief Ombudsman across various facilities include:
 - (a) poor cleanliness and repair of furniture, fixtures and carpets, and general maintenance concerns;
 - (b) layout of facilities that do not enable gender separation or line-of-sight supervision;

⁴⁰ For instance the European Committee for the Prevention of Torture (CPT) has [said](#) that '*while this group of prisoners will (or at least should, if the classification system is operating satisfactorily) represent a very small proportion of the overall prison population... it is a group that is of particular concern to the CPT, as the need to take exceptional measures vis-à-vis such prisoners brings with it a greater risk of inhuman treatment*'.

See also ODIHR and Penal Reform International's [Protecting Human Rights in Prisons while Preventing Radicalization Leading to Terrorism or Violence: A Guide for Detention Monitors](#) and Amnesty International & Open Justice Initiative's [Inhuman and Unnecessary: Human Rights Violations in Dutch High-Security Prisons in the Context of Counterterrorism](#).

⁴¹ Dr Sharon Shalev, *First, Do No Harm: segregation, restraint, and pepper spray use in women's prisons in Aotearoa New Zealand* (2021) available: <https://tikatangata.org.nz/our-work/first-do-no-harm-segregation-restraint-and-pepper-spray-use-in-womens-prisons-in-new-zealand>.

⁴² Office of the Inspectorate, above n 38.

- (c) layout and conditions of de-escalation areas and seclusion rooms, including insufficient physical space and natural light, a lack of access to toilet facilities, the presence of graffiti, and inadequate sound-proofing;
 - (d) lack of privacy blinds or curtains in observation windows of bedrooms, impacting on the privacy of service users; and
 - (e) lack of ventilation and/or faulty air conditioning systems.
44. The Chief Ombudsman has highlighted his view that all people accessing health and disability services are entitled, and should expect, to receive health care in a clean, safe and well-maintained environment. He is also of the view that health facilities should have accommodation options that meet the needs of all groups, including women, people with disabilities, and otherwise vulnerable individuals.

Prisons

45. The Chief Ombudsman has noted a wide variation in accommodation standards both within and between prisons. In many of his OPCAT reports, the Chief Ombudsman has expressed his concerns that while some prison units are no longer fit for purpose and in poor condition, they continue to be used to accommodate people in the custody of Corrections. Specific concerns raised by the Chief Ombudsman include:
- (a) lack of ventilation in cells leading to excessive temperatures, condensation, dampness, and/or the growth of black mould;
 - (b) use of 'single double' cells (single cells modified to accommodate two people), resulting in a lack of adequate space for two people and confined conditions; and
 - (c) cells with flaking paint, excessive graffiti on walls, doors and windows, and a lack of curtains on windows.
46. Such standards of accommodation are concerning in and of themselves. The risk of such conditions amounting to ill-treatment is further exacerbated by the prolonged periods of time that many people in the custody of Corrections spend locked in their cells.

Police custodial settings

47. The condition of Police cells varies significantly from facility to facility. Poorer conditions are often found in many provincial centres around the country. Many older facilities do not have adequate CCTV coverage, have no call buttons or other means for detainees to seek help in an emergency and the built environment does not meet modern standards. These older facilities do not meet the IPCA's NPM expectation that detainees are held in a custody unit that is safe, in good condition and that promotes their security, privacy and dignity. The IPCA is concerned that the poor physical environments can affect the health and wellbeing of detainees and create additional challenges for staff charged with managing detainees.

Care and protection, youth justice and mental health settings for children and young people

48. Mana Mokopuna | Children and Young People's Commission has observed that a number of the care and protection, youth justice and mental health settings for children and young people are not fit for purpose. In particular, Mana Mokopuna | Children and Young People's Commission has observed that a number of Oranga Tamariki residences are akin to prisons for children and

young people.

NZDF detention facilities

49. The NZDF continues to have just one dedicated facility that caters for the military punishment of detention. The SCE is based at Burnham Military Camp, Christchurch. However, as the trend for long-term detainees is on the rise, the NZDF appear to be looking at plans for the extension of the facility to accommodate more long-term detainees. The Chief of NZDF has recently written to the IPSE to advise that he has instructed a feasibility review to be conducted to determine the building requirements of a facility for long-term detainees.
50. Members of the NZDF can also be confined in Ship, Camp and Base facilities when close arrest is ordered. However, these periods of confinement are rarely ordered and confinement exceeding 12 hours is highly unusual. The NZDF also has holding cell facilities on its Bases and Camps. The IPSE considers that the facilities at RNZAF Base OHAKEA, Linton and Trentham Military Camp and RNZAF Base AUCKLAND are the only Bases considered as being fit for purpose. In relation to the other holding cell facilities on NZDF Cases and Camps:
- (a) *HMNZS PHILOMEL* cells remain closed as they are no longer fit for purpose and if required the cells at RNZAF Base AUCKLAND can be utilised until a new purpose-built facility is delivered for the Devonport Naval Base. The IPSE has recommended that the NZDF consider permanently closing this detention facility.
 - (b) *Papakura Military Camp* does not have dedicated cells and if required the cells at RNZAF Base AUCKLAND can be utilised.
 - (c) *Waiouru Military Camp* cells are closed and if required the cells at RNZAF Base OHAKEA can be utilised.
 - (d) *RNZAF Base Woodbourne* has no dedicated cells. Plans are underway to install temporary facilities that comply with extant specifications but still no fixed completion date has been provided to the ISPE.
 - (e) *Burnham Military Camp* cells can be used but are scheduled for remediation, although the urgency is somewhat mitigated by the presence of SCE on Camp. However, still no fixed completion date has been provided to ISPE.
51. While remediation plans for various facilities appear to have been signalled, a definitive funded remediation programme is still to be published by the NZDF.

IV. Mental health in detention

52. **The Government has taken some steps to implement recommendations related to improving mental health supports for persons in detention.**
53. The Government accepted two recommendations from the third cycle UPR to:⁴³
- (a) ensure the provision of physical and mental health services for those in detention facilities;⁴⁴ and

⁴³ New Zealand Government, UN Doc. A/HRC/41/4/Add.1, above n 1, at [23] to [28] and [41] to [42].

⁴⁴ UNHRC, UN Doc. A/HRC/41/4 above n 2, at [122.68] (Belarus).

- (b) progress with efforts to address disparities in mental health and improve services for vulnerable groups.⁴⁵

Prisons

54. Mental health support for people in the custody of Corrections is variable across the country. In response to recent OPCAT reports, Corrections has highlighted several initiatives to support the mental health of people in its custody, including the rollout of ‘Mental Health 101’ training for frontline staff and recruitment of specialist mental health clinical staff. Additionally, the new Waikeria Prison facility currently under construction will include a 100-bed specialist mental health and substance addiction facility, co-designed and co-run by Corrections and Te Whatu Ora | Health New Zealand Waikato (formerly the Waikato District Health Board).⁴⁶
55. While these are welcome initiatives, the Chief Ombudsman has also raised multiple concerns and made several recommendations related to improving the mental health of people deprived of their liberty in prisons. These include ensuring that access to mental health services is formalised, and that staff working in specialist Intervention and Support Units have appropriate skills and training to work with people experiencing acute mental distress.
56. Between 2019 and 2022, responses to prison surveys conducted across eight prison sites indicated that an average of 75 percent of survey respondents did not feel supported with their emotional or mental health needs whilst in prison, as outlined in Table 1.

Table 1: Selected Ombudsman prison survey results

Year	Facility	Survey question: Do you feel you have any emotional well-being/ mental health issues?		Survey question: Do you feel supported with your emotional/ mental health needs?	
		Yes	No	Yes	No
2022	Otago Corrections Facility	67% (109)	33% (82)	23% (25)	77% (82)
2020	Auckland Prison	55% (140)	45% (115)	27% (35)	73% (94)
2020	Waikeria Prison	52% (183)	48% (168)	26% (45)	74% (130)
2019	Tongariro Prison	43% (82)	57% (110)	39% (31)	61% (49)
2019	Northland Region Corrections Facility	41% (164)	59% (235)	25% (39)	75% (119)
2019	Auckland South Corrections Facility	38% (209)	62% (338)	19% (39)	81% (163)
Average:		50%	50%	25%	75%

Police custodial settings

57. Police are regularly required to respond to situations where there are concerns for a person’s mental health. Police have powers to detain⁴⁷ a person they believe is “mentally disordered” so that they can be taken to a “Police station, hospital, or surgery, or to some other appropriate place” for a mental health assessment. The IPCA regularly sees people being taken to a Police

⁴⁵ UNHRC, UN Doc. A/HRC/41/4 above n 2, at [122.100] (Sri Lanka).

⁴⁶ Ombudsman New Zealand. 2020. *Final report on an unannounced inspection of Waikeria Prison under the Crimes of Torture Act 1989*. Wellington: Ombudsman New Zealand. Available: <https://www.ombudsman.parliament.nz/resources/final-report-unannounced-inspection-waikeria-prison-under-crimes-torture-act-1989>.

⁴⁷ Mental Health (Compulsory Assessment and Treatment) Act 1992, s 109.

custody unit to await the arrival of a mental health assessment team rather than being taken to a hospital or dedicated mental health facility. It is the IPCA's view that Police custody units are not suitable environments for mental health assessments and that Police should be able to take a person detained under the Mental Health Act to a medical facility instead.

58. The IPCA has examined the number of mental health detentions across the 12 Policing districts and note that in Auckland⁴⁸ very few people are taken to the Police cells. This is due to local arrangements with health authorities who have agreements in place with Police that people should be taken to hospital. The IPCA would like to see similar arrangements put in place whenever possible in other parts of the country.

Care and protection, youth justice and mental health settings for children and young people

59. Mana Mokopuna | Children and Young People's Commission has observed that there is a lack of specialist intervention and care for children and young people with mental health needs, neurodiversity, disabilities, and other high and complex needs. This need is not being met by facilities and they are often treated as behavioural issues (due to the lack of training to support). Additionally, Mana Mokopuna | Children and Young People's Commission has observed that there are limited transitional or community mental health services to support children and young people once they transition out of secure facilities.

NZDF detention facilities

60. The IPSE considers the SCE has made good progress in establishing robust processes to assist individuals dealing with mental health concerns. Staff has received some professional development in this area through the Mental Health Education and Resource Centre. SCE is also well-placed to utilise the full suite of internal and external support network as part of its rehabilitation/reintegration programme. One notable aspect of assisting in this area is the community service work that the detainees do regularly. Helping others freely seems to help the wellbeing of detainees.

V. Training and education

61. **The Government has not yet implemented recommendations related to improving human rights training for personnel working across all aspects of the criminal justice system.**
62. The Government accepted a recommendation from the third cycle UPR to conduct training programmes aimed at raising awareness for those working in the criminal justice system of relevant human rights standards.⁴⁹
63. The New Zealand NPMs have observed a lack of training and professional development about human rights obligations for law enforcement and custodial personnel working across the majority of detention agencies in New Zealand. Inadequate training, exacerbated by ongoing staff shortages, has negative impacts on the treatment of persons deprived of their liberty.
64. Mana Mokopuna | Children and Young People's Commission has observed a lack of quality recruitment, training, professional development, and retention of quality staff across care and protection, youth justice and mental health settings for children and young people in New

⁴⁸ Counties Manakau and Waitemata Police districts.

⁴⁹ UNHRC, UN Doc. A/HRC/41/4 above n 2, at [122.60] (Qatar); New Zealand Government, UN Doc. A/HRC/41/4/Add.1, above n 1.

Zealand. Staff has advised Mana Mokopuna | Children and Young People's Commission on OPCAT monitoring visits *'[these facilities] have the highest need rangatahi [children and young people] with the least qualified workforce'*.⁵⁰

65. The IPCA has made several recommendations to the Commissioner of Police to increase the delivery of custodial training. In response, Police have introduced more comprehensive face-to-face training for custody officers and custody supervisors. Additional online training modules have also been developed that all frontline staff are required to complete. Whilst the IPCA supports these improvements, it remains concerned that the level of training provided is still insufficient. The IPCA has identified that staff require further training in completing health and welfare risk assessments and in formulating care plans to mitigate identified risks. More specialist training in the care and management of detainees with both physical and mental health issues and those under the influence of alcohol or other drugs is also needed.
66. The Chief Ombudsman has often raised concerns about the lack of specific intellectual disability training for clinical staff working in intellectual disability services, and has noted an apparent lack of clarity in ownership of standard setting for training and support for nurses providing care for people with intellectual disabilities.⁵¹ The Chief Ombudsman has also frequently raised his concerns regarding staff in health and disability services not having completed, or being out of date with, Safe Practice and Effective Communication (**SPEC**) training.⁵²
67. Through their preventive function, the New Zealand NPMs consider they can play a critical role in assisting with the provision of training about human rights obligations including the prevention of torture and ill-treatment. By way of example, the IPCA presents to each Police Custody Supervisors Course on the provisions of Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (**UNCAT**) and the OPCAT. In these sessions the IPCA's NPM inspection methodology and complaint and investigation process is also covered. Scenarios are used to demonstrate the importance of meeting detainees' individual needs and the negative outcomes that can be created by processes and practices that do not comply with Police policy or the IPCA's NPM expectations for Police custody.
68. The New Zealand NPMs consider that staff working within the majority of detaining agencies in New Zealand would benefit from further training on thematic human rights issues, as detailed in the recommendations at **Annex 1**.

⁵⁰ Mana Mokopuna | Children and Young People's Commission. 2021. [Te Au rere a te Tonga OPCAT Monitoring report, Mana Mokopuna | Children and Young People's Commission](#).

⁵¹ See, for example, Ombudsman New Zealand. 2022. *Report on an unannounced inspection of Ward 10a and Helensburgh Cottage, Wakari Hospital Dunedin, under the Crimes of Torture Act 1989*. Wellington: Ombudsman New Zealand.

⁵² The SPEC programme includes training in restraint minimisation, communication, de-escalation, collaborative ways of working, and the teaching of personal restraint and breakaway techniques. For more information see <https://www.tepou.co.nz/initiatives/reducing-seclusion-and-restraint/safe-practice-effective-communication>.