



# He mihi | Acknowledgments

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## **The criminal justice system is failing Māori.**

This fact has been recognised for decades by leaders, academics and whānau. Successive governments have made some changes to the system, with some of those changes done on the belief that it would “stem the flow” of people, including Māori, into the criminal justice system. And yet the proportionality of Māori in prisons continues to grow.

Participants at Hui Māori 2019 called for the current prison system to be abolished. Hui Māori participants also sought a new approach underpinned by Te Ao Māori, the Crown taking responsibility for colonisation, disestablishing Oranga Tamariki and the justice system reflecting the true intentions of *Puao-Te-Ata-Tu* and *He Whaipanga Hou*. In order to progress this call Ināia Tonu Nei have prioritised being involved in a handful of strategic initiatives which we think have the greatest potential to lead to reducing the numbers of Māori coming into the justice system.

The Long-Term Insights Briefing, a new type of Crown report to be developed by government departments under the Public Service Act 2020, was identified by Ināia Tonu Nei and the Justice Sector Leadership Board as an opportunity to work together. We met to agree the topic area. We thought the topic of imprisonment would make an aspect of the criminal justice system and its performance more visible. The joint project has also provided opportunities for Ināia Tonu Nei to work with justice sector government agencies to influence their thinking and envisage a different future. We also saw this project as work towards progressing the recommendation from the *Hui Māori Report* to reform the New Zealand justice system based on abolishing prisons by 2040.

Originally the Ināia Tonu Nei contribution was going to be weaved into the Long-Term Insights Briefing. However, after discussions we agreed with the Justice Sector Leadership Board that our contribution will instead be set out in a stand-alone companion report. This is because we did not want to have to mute or moderate our authentic voices to fit within what is palatable inside a government agency report.

Visioning an Aotearoa without prisons is not a new idea. We all have a common goal of wanting an Aotearoa where our tamariki, rangatahi and mokopuna live their best lives and realise their full potential. We think charting a pathway

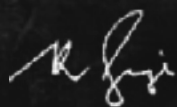
towards the goal of an Aotearoa without prisons should be a top priority, for in pursuit of this goal we can be taking steps to be creative and innovative, looking to both the past and future.

The whakatauaāki “**Kia whakatōmuri te haere whakamua**”, we walk backwards into the future with our eyes fixed firmly on the past, has assisted our thinking. It speaks to Māori views of time, where the past, present and future are viewed as intertwined. This conceptualisation of time does not leave the past behind, rather the past is carried into the future.

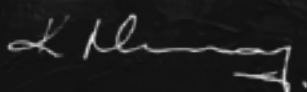
In developing the content of this report, we gratefully acknowledge and thank:

- > Pou Tikanga from the National Iwi Chairs Forum for co-hosting our wānanga on “An Aotearoa without prisons” held in May 2022
- > advocates, academics, whānau and leaders that participated in our May 2022 wānanga
- > Professor Tracey McIntosh (MNZM), Kingi Snelgar and Mere Mangu for their feedback and assistance in the drafting of this report
- > Te Roro members for their views, skills and hard work in assisting the preparation of this report.

Looking ahead we need everyone to recognise and acknowledge that the criminal justice system is not working and that it is failing Māori. Transformation of how justice is delivered in Aotearoa is needed. Māori need to be at the forefront of leading this change as successive governments and government departments cannot do this alone. We know that considerable, meaningful and long-lasting change will likely take a generation to achieve. We must all be involved! Karawhiua!



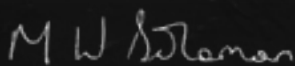
**Te Kou Rikirangi Gage**



**Katie Murray**



**Eugene Ryder**



**Tā Mark Solomon**



**Dee-Ann Wolferstan**



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*We lead, you follow.*



# Tūāpapa me te horopaki | Background and context

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**Ināia Tonu Nei<sup>1</sup> was born out of Māori resistance to the lack of Māori voice at the Crown’s Criminal Justice Summit in August 2018. This summit was the flagship event of the government’s Hāpaitia te Oranga Tangata – Safe and Effective Justice programme which was established to help in setting and communicating the new direction for the New Zealand criminal justice system.**


Frustrated by the lack of Māori voice, Māori attendees called for an intentional space to discuss a Māori response to reforming the justice system. From that caucus, a call was made for a national hui Māori. The then Minister supported these actions and committed to enable this hui to take place. From that caucus, the volunteer group Te Ohu Whakatika was formed to design and convene a Hui Māori.

Hui Māori was held in Rotorua in April 2019. Over 200 Māori with extensive criminal justice experience gathered for this hui, including those with lived experience, practitioners, Māori community groups, service providers, the judiciary, academics, Māori/iwi leaders, and musicians. Empowered by the theme Ināia Tonu Nei – we lead, you follow, the hui culminated in a strong call to establish a mana ōrite model of partnership with the Crown, look at constitutional reform, begin decolonising the justice system and design an intergenerational plan to reform that system.

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1 <https://www.inaiatonunei.nz/about>





Ināia Tonu Nei is a name shared by a kaupapa, a hui, a report and a group of kaitiaki comprising Rikirangi Gage, Katie Murray, Eugene Ryder, Tā Mark Solomon and Dee-Ann Wolferstan. Ngā kaitiaki, supported by Te Roro (a rōpū made up of Māori advocates, researchers, creatives and policy thinkers), are committed to the kaupapa of Ināia Tonu Nei as articulated at the 2019 Hui Māori and in the *Hui Māori Report*.<sup>2</sup>

A Mana Ōrite Relationship Agreement was signed in April 2021 between ngā kaitiaki and the Justice Sector Leadership Board. The purpose of the relationship is to create a future that benefits both Māori and all New Zealanders by transforming the justice system. The vision being that Māori are no longer affected by the impacts of institutional racism, whānau and communities are empowered, and the system focuses on healing and restoration. It is agreed that neither Māori nor the Crown can do this alone and so the mana ōrite relationship is a necessary foundation for justice system transformation.

Investment is required to work in a mana ōrite way to ensure Māori can effectively engage with the Crown and where both parties recognise each other's capability, authority and role in the relationship. Government agencies already exist and are funded to support Ministers and Chief Executives; Māori do not have the same structures, routines and resourcing. Access to funding from the Crown and other entities for this new way of working is critical, noting that as the nature and maturity of this new way of working strengthens so may the investment approach.

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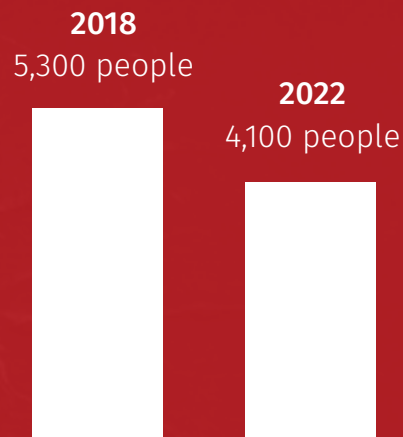
2 <https://static1.squarespace.com/static/60d12cb5a665b46504ad8b32/t/60fe31b1735d6f7990bf3f5a/1627271661386/d8s653-Inaia-Tonu-Nei-Hui-Maori-English-version.pdf>

# He anga whakamua | A vision for the future

The theme of the justice sector Long-Term Insights Briefing is “What are the future risks and opportunities for imprisonment in New Zealand?” For Māori, the insights are clear:

- > **prisons fail to deter crime and to address its causes and other issues** such as mental health and addiction, and ultimately, they trap our people in lives of violence and poverty
- > **Māori are imprisoned at higher proportions and rates than others.**

- > The Long-Term Insights Briefing notes while the number of Māori in prison has been falling for the last four years (dropping by 22 percent from 5,300 to 4,100), this drop has been at a lower rate compared to non-Māori, **resulting in Māori making up an even larger proportion of the prison population.**

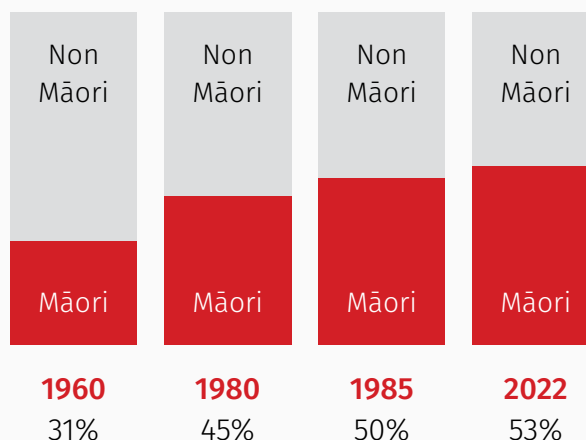


- > The proportion drop for young people in prison has also been **greater for European youth compared to rangatahi Māori.**



### The proportion of the prison population who are Māori, in various years

- > The proportion has increased for Māori from 31 percent in 1960, 45 percent in 1980, 50 percent for the first time in 1985 (and consistently since 1999) and has reached 53 percent in 2022<sup>3</sup> and 59 percent of the remand population.



- > Māori men are now more than **six times more likely to be in prison** than non-Māori men.
- > Māori women are now almost **11 times more likely to be in prison** than non-Māori women<sup>4</sup> and are **70 percent of the remand population**.

## Māori are over-represented at every stage in the criminal justice system

The vision of Ināia Tonu Nei for the future is simple: **an Aotearoa where all whānau, tamariki and mokopuna are thriving, connected and are able to exercise tino rangatiratanga over their lives and destinies**. To achieve this, it means **an Aotearoa without prisons**. This is a vision shared by the many voices that came together at Hui Māori in 2019 to discuss transforming the justice system. We not only believe it is possible, but necessary. An Aotearoa without prisons is one where the purpose of a justice system is to address the underlying drivers of harm and crime whilst ensuring safety and appropriate consequences; where mental health, healing and education needs are provided for; and where Māori have tino rangatiratanga over delivering this for our people.

To look to the future, we believe we need to look to our past. We know an Aotearoa where whānau, tamariki and mokopuna are thriving, connected and are able to exercise tino rangatiratanga over their lives and destinies, and there are no prisons, is achievable because that was the Aotearoa that existed prior to colonisation and the imposition of the western justice system.

3 An average of 0.8 percent of the total Māori adult population over the last 30 years

4 0.1% of all Māori women

## Ngā tikanga o Aotearoa | A tikanga based Aotearoa


**Prior to European contact, Māori had a well-developed system of custom and process, based on tikanga, that ensured protection, stability of social life and group (whānau and hapū) integrity.<sup>5</sup>**

Whakapapa provided the structural framework for Māori society and whanaungatanga provided the moral and ethical framework within which daily interaction occurred between whanaunga. Living according to the principles of whanaungatanga produced a state of ora in which peoples physical, mental, spiritual and emotional aspects were balanced and in harmony.<sup>6</sup> Māori society was largely based around collective responsibility. Individualism and individual responsibility were uncommon and the group's interests overrode those of the individual. Individual rights, responsibilities and obligations were determined by standing in the community and relative mana and tapu in relation to others.<sup>7</sup>

**“The word ‘tikanga’ itself provides a clue that tikanga Māori deals with right and wrong. ‘Tika’ means ‘to be right’ and thus tikanga Māori focuses on the correct way of doing something. This involves moral judgements about appropriate ways of behaving and acting in everyday life. From this standpoint it is but a short step to seeing tikanga Māori generally as a normative system. A normative system deals with norms of society, with what is considered to be normal and right. Tikanga Māori was an essential part of the traditional Māori normative system since it dealt with moral behaviour, with correct ways of behaving and with processes for correcting and compensating for bad behaviour... But there is some force and power in tikanga Māori. Transgressions can hurt the offenders and result in some punishment...”**

**(Hirini Moko Mead (2016) *Tikanga Māori, Living by Māori values*, pages 6-7)**

- 5 New Zealand Māori Council (1999) *Restorative Justice: A Māori Perspective*, Chapter two of Restorative Justice Contemporary Themes and Practice
- 6 Nin Tomas and Khylee Quince (1999) *Chapter 7: Māori disputes and their resolution*, in *Dispute Resolution in New Zealand* – Peter Spiller (ed)
- 7 Ministry of Justice (2001) *He Hinātore ki te Ao Māori, A glimpse into the Māori world*



The concepts of mana and tapu were known throughout Aotearoa and were used to regulate actions of whānau and hapū members and inter-hapū activities.<sup>8</sup> Tapu was a major cohesive force because every person was regarded as being tapu.<sup>9</sup> Breaches of personal tapu endangered the individual by weakening the mauri and reducing the protective capacity of the wairua. Personal mana protected people's spiritual integrity. It provided the authority by which someone established dominion over themselves and then asserted it to protect against spiritual and physical violation by others. Together, mana and tapu enabled people to act autonomously, so long as they did not interfere unnecessarily with others and continued to uphold their obligations and responsibilities to the whānau and hapū.<sup>10</sup>

There was an understanding that society could only function if all things physical and spiritual were held in balance. Actions that breached tapu were known as hara and took many forms. Acts of bodily harm to another, sexual offences and property offences would be seen as a failure to recognise one's responsibility to others, would damage that person's tapu, and threaten whānau and hapū order.<sup>11</sup> Hara was caused by an imbalance in the spiritual, emotional, physical or social wellbeing of a person or whānau. Importantly, a hara affected not only the individual but the whānau and sometimes more broadly. The laws to address hara grew from a process of balance that acknowledged the links between all forces and all conduct. In this sense, the "causes" of imbalance, the motives for offending, had to be addressed if any dispute was to be resolved – in the process of restoration, they assumed more importance than the hara itself.<sup>12</sup>

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8 Nin Tomas and Khylee Quince (1999) *Chapter 7: Māori disputes and their resolution*, in *Dispute Resolution in New Zealand* – Peter Spiller (ed)

9 Moana Jackson (1988) *The Māori and the criminal justice system, A new perspective: He Whaipaanga Hou Part 2*

10 Nin Tomas and Khylee Quince (1999) *Chapter 7: Māori disputes and their resolution*, in *Dispute Resolution in New Zealand* – Peter Spiller (ed)

11 Noaia Arena Napia (1994) *Towards a Māori criminal justice system*

12 Moana Jackson (1988) *The Māori and the criminal justice system, A new perspective: He Whaipaanga Hou Part 2*



Utu was a means of seeking, maintaining and restoring harmony and balance in Māori society and relationships. It was a reciprocation of both positive and negative deeds from one person to another.<sup>13</sup> Utua kia ea was seen as a process that must be undertaken to account for the harm and to restore mana to achieve a state of restoration and balance. One way of restoring balance was via muru which was known to be a “legalised and established system of plundering as penalty for offences, which in a rough way resembled (the Pākehā) law by which a man is obliged to pay damages”.<sup>14</sup>

Retribution against an individual offender was not seen as the primary mechanism for achieving justice. Rather whānau and hapū were accountable for their actions (manaakitanga) and the exacted compensation on behalf of the aggrieved.<sup>15</sup> Decisions on how to settle the consequences of hara were decided collectively and usually involved the whole whānau. There was a continuum of responses to various hara. There was also an emphasis on righting one’s wrongs and coming up with preventative strategies to stop similar incidents happening again. The whānau/hapū would seek to understand why the act or breach had occurred in the first place rather than simply focusing on the act in isolation.<sup>16</sup> The aim was to restore the mana of all parties and to ensure that measures were taken to restore the future social order for the whānau and hapū.<sup>17</sup> In a very practical way, it was essential to restore balance so that the community could live in harmony.

**“It is well established that incarceration rates are predominantly independent of crime rates. It is government policy that guides who goes to prison and for how long. Thus, high incarceration rates reflect a culture of retributive rather than restorative justice, which in turn has major ongoing costs for society”**

**(Professor Peter Gluckman (2018) *Using evidence to build a better justice system: the challenge of rising prison costs*, page 5)**

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13 Ministry of Justice (2001) *He Hinātore ki te Ao Māori, A glimpse into the Māori world*

14 Moana Jackson (1988) *The Māori and the criminal justice system, A new perspective: He Whaipanga Hou Part 2*

15 New Zealand Māori Council (1999) *Restorative Justice: A Māori Perspective*, Chapter two of Restorative Justice Contemporary Themes and Practice

16 Breahn Arnold (2018) *Tikanga Māori implemented within the New Zealand Justice System*

17 New Zealand Māori Council (1999) *Restorative Justice: A Māori Perspective*, Chapter two of Restorative Justice Contemporary Themes and Practice

## Ngā pānga o ngā tikanga a te karauna | Recognising colonisation and its effects

**When our tūpuna signed He Whakaputanga in 1835 and Te Tiriti o Waitangi in 1840 their expectation was their rangatiratanga was reaffirmed and tikanga, the Māori way of life, and Māori systems and processes would continue.**

Instead of working with Māori as Te Tiriti o Waitangi partners to develop a justice system that was appropriate for Aotearoa, the British model of law and justice was imposed by the Crown, breaching Te Tiriti o Waitangi.

**“Colonisation is an injustice that is often too painful to be fully told; and the relationships it has damaged and continues to damage can seem beyond repair.**

*(Moana Jackson (2021) Decolonisation and the stories in the land, E-Tangata)*


The purpose of the imposed criminal justice system and imprisonment has not always been the same for Māori and non-Māori. In the 19th century there was a prevailing view that penal policy for Māori would expedite the process of assimilation by preparing Māori for British citizenship which was viewed as superior to tikanga Māori and the Māori way of life. This imposition upset the state of ora and denied Māori the right to seek utu according to our own traditions and tikanga.<sup>18</sup>

The imprisonment and arbitrary detention of entire whānau (men, women and children) was also a key strategy for dealing with Māori who resisted the unlawful actions of the state, or who were perceived by the state as comprising a “dangerous underclass” or being “in rebellion”.<sup>19</sup> As noted by Bull, “in times when Māori were silent, they were less likely to be incarcerated; when voices were raised in resistance, or when political activity against assimilation was undertaken, prisons were filled with Māori”.<sup>20</sup>

18 Pratt 1992, cited in *Whānau ora and imprisonment*, Sir Kim Workman, in te Arotahi Series Paper September 2019 – 03

19 Pratt 1992, cited in *Whānau ora and imprisonment*, Sir Kim Workman, in te Arotahi Series Paper September 2019 – 03

20 Simone Bull (2004) ‘*The land of murder, cannibalism, and all kinds of atrocious crimes? Maori and crime in New Zealand 1853-1919*’, *British Journal of Criminology*, 44 pp. 496-519



In those times, the Crown's strategy of fostering Māori compliance extended to policies of:

- > mass imprisonment
- > unlawful detention
- > indefinite, indeterminate and arbitrary detention
- > breaches of basic human rights
- > an extension of detention based on perceived risk to public safety.<sup>21</sup>

The Crown's actions during the colonial period resulted in loss of land, culture, language, way of life and urban push (in the 20th century, particularly immediately post World War II) which caused separation from and degradation of traditional structures, and poverty and contributed to intergenerational trauma still experienced within whānau today. Colonisation deprived us of our authority and set up a racist system that continues to not work for us or many others trapped inside it. The statistics show that the justice system treats Māori disproportionately at every stage.

The Long-Term Insights Briefing notes the significant growth of Māori imprisonment from 1960 to the mid-1980s was driven by Māori urbanisation, government policies and practices which disproportionately affected Māori by widening the net (reflective of systemic, direct, and indirect racism), as well as changes in the general Māori population. These factors are underpinned by the impacts of colonisation on Māori:

- > Māori land dispossession, urbanisation, economic and educational marginalisation, social isolation and cultural alienation are best understood as the products of colonialisation and associated ethnic assimilation processes
- > levels of recorded crime are also the result of government priorities and operational decision-making. There is evidence that targeted police operations, particularly those focused on urban areas with a high density of Māori populations, disproportionately impacted young Māori, particularly young males
- > shifting penal approaches, such as the borstal system, also disproportionately impacted Māori.

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21 Sir Kim Workman (2019) *Whānau ora and imprisonment*, in te Arotahi Series Paper September 2019 – 03





# He huarahi whakamua | Achieving the vision

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**We have a vision for Aotearoa. A vision that looks to build an Aotearoa where all whānau, tamariki and mokopuna are thriving, connected and are able to exercise tino rangatiratanga over their lives without prisons.**

We know is not as simple as returning to the way things were. But we believe by applying the same principles and values that maintained justice for our tūpuna and taking what learnings we can from the current system, we can move Aotearoa towards that vision. The insights, risks and opportunities we describe below can help set the course.



# Ngā whakamahukitanga | Our insights into what the future risks and opportunities for imprisonment in New Zealand are

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## Ngā ahuatanga o te wā | An overview of how we see the current situation

The Long-Term Insights Briefing outlines what Ināia Tonu Nei consider to be the dire situation for Māori and imprisonment. Since 2018, while the overall actual numbers of Māori in prison have decreased, the disproportionality of Māori has continued to increase, in turn ensuring the disproportionate impact on whānau Māori, hapū, iwi and communities. Prisons are therefore continuing to fail Māori.

To Ināia Tonu Nei, it appears we have a system designed to oppress, brutalise and perpetuate harm even though those are not the stated aims. Perhaps it is working as really intended? Such a system never made sense to Ināia Tonu Nei. The current system is a product of colonisation. Rather than responding to and healing hara it is anti-therapeutic, it reproduces injustice, and it is a blunt instrument.


**“...the number of Māori in the system is a crisis and in need of urgent attention... The effects of colonisation undermine, disenfranchise and conspire to trap Māori in the criminal justice system and ... racism is embedded in every part of it...”**

*(Te Uepū Hāpai i te Ora (2018) He Waka Roimata – Transforming our criminal justice system, page 3)*

Ināia Tonu Nei see a ‘tough on crime’ approach has prioritised control and punishment over habilitation, rehabilitation, healing, and restoration. This approach has not increased public safety. The incentives are wrong where successive governments on both sides of the political spectrum, encouraged by vocal lobbyists, seek to develop “vote-winning, simplistic solutions for selected law-and-order problems... where reactive policy choices that are not particularly evidence-based have resulted in disproportionate incarceration and costs, with no evidence of concomitant increase in public sense of safety or realisation of decreasing crime.”<sup>22</sup>

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22 Professor Peter Gluckman (2018) *Using evidence to build a better justice system: the challenge of rising prison costs*



Aotearoa New Zealand's current punitive justice system is based on deterrence theory. It is often posited as fact that prisons are necessary in order to deter people from committing crimes. However, there is little evidence to demonstrate that prisons succeed in this objective. Reported and actual crime rates (including non-reported crimes) have no causal relationship to the rate of imprisonment.<sup>23</sup> Prisoner numbers are governed more by criminal justice policy and prison capacity.<sup>24</sup> In Aotearoa New Zealand, recent large increases in the prison population have been attributed to 2013 changes to bail laws and judicial practices that made it harder for people to be held in the community before trial,<sup>25</sup> although the Long-Term Insights Briefing notes there are other important reasons such as greater enforcement of bail conditions. Other research shows that deterrence is ineffective as people who commit harm often do not act rationally when they offend.

People who harm have, by and large, experienced harm. Most people caught up in our justice system have first experienced failures in other systems. Research by the Royal Commission of Inquiry into Abuse in Care found that as many as one in three of those children and young people who had been in state residential care between 1950 and 1999 went on to serve a criminal custodial sentence later in life.<sup>26</sup>

Many people in our criminal justice system have high and complex needs. In 2018, nearly all (91%) people in prison had a lifetime diagnosable mental illness or substance-use disorder, 62% diagnosed in the past 12 months.<sup>27</sup> The Long-Term Insights Briefing also notes people in prison are more likely to have basic literacy and numeracy needs, learning difficulties, have experienced a traumatic brain injury, previous victimisation and greater exposure to trauma. This harm is then compounded by the harm caused by being in the justice system. We have no system for healing, righting wrongs, protecting tapu, restoring mana and finding balance. The system does not work for “offenders”, whānau, “victims” or those who work inside it.

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23 Ti Lamusse and Tracey McIntosh (2022) *Prison Abolitionism, Philosophies, Politics and Practices*, in the Aotearoa Handbook of Criminology

24 Armstrong, 2013 cited in *Prison Abolitionism, Philosophies, Politics and Practices*, Ti Lamusse and Tracey McIntosh in the Aotearoa Handbook of Criminology, February 2022

25 Black et al, 2017 cited in *Prison Abolitionism, Philosophies, Politics and Practices*, Ti Lamusse and Tracey McIntosh in the Aotearoa Handbook of Criminology, February 2022

26 Snergia (2022) *Care to Custody: Incarceration rates*. Wellington: Royal Commission of Inquiry into Abuse in Care

27 Sir Peter Gluckman (2018) *Using evidence to build a better justice system: The challenge of rising prison costs*


## Te panonitanga | The current justice system needs to be transformed

The approach taken by successive governments and agencies has failed to significantly impact Māori overrepresentation in prisons and the system continues to be racist. The approach must therefore change. There is a long and rich history of Māori scholarship calling for justice reform, which outlines the detrimental effects the justice system has had, and continues to have, on Māori. The system has been largely ignoring the whakapapa of resistance and the advice, reports and mahi that already exist which has called for transformation of the justice system and a new approach over at least five decades. These reports include:

- > *Puao-Te-Ata-Tu* - Ministerial Advisory Committee on a Māori perspective for the Department of Social Welfare, June 1986
- > *The Māori and the Criminal Justice System, A New Perspective, He Whaipaanga Hou* – Moana Jackson, February 1987
- > *The Māori and the Criminal Justice System, A New Perspective: He Whaipaanga Hou Part 2* – Moana Jackson, 1988
- > *Prison Review, Te Ara Hou: The New Way*, Ministerial Committee of Inquiry into the Prisons System, Sir Clinton Roper (Chair), 1989
- > *Tū Mai Te Rangī! Report on the Crown and Disproportionate Reoffending Rates*, Waitangi Tribunal, 2017
- > *Now is the time, we lead you follow, Hui Māori Report*, Ināia Tonu Nei, July 2019
- > *Turuki! Turuki!*, Te Uepū Hāpai i te Ora: Safe and Effective Justice Advisory Group, December 2019.

More recent reports have reiterated the findings of reports from the 1980s providing similar messages and recommendations. For example, the *Roper Report* of 1989 proposed a move to habilitation centres rather than prisons. This call was reiterated thirty years later in 2019 in *Turuki! Turuki!* As an input to development of our thoughts on the Long-Term Insights Briefing, Ināia Tonu Nei and the National Iwi Chairs Forum Pou Tikanga held a workshop in May 2022<sup>28</sup> to discuss moving to an Aotearoa without prisons.

28 <https://static1.squarespace.com/static/60d12cb5a665b46504ad8b32/t/62b3ac31688e0b08777b8ac0/1655942198302/2022+06+20+final+notes+from+19+May+w%C4%81nanga.pdf>



The same calls were reiterated there – that we should move to habilitation centres rather than prison; that we don't need more reports, instead we need concerted action to implement the reports we already have and what they actually propose (rather than the Crown cherry picking the bits and pieces it finds palatable).

The *Hui Māori Report* notes hui participants:

- > discussed the importance of Te Ao Māori when reforming the justice system; they said an understanding is needed of how Te Ao Māori interacts with the justice system and Te Ao Māori must be central to any reform of the justice system
- > discussed the extensive work that Māori have undertaken to change the justice system. However, the Crown is yet to enact previous recommendations from Māori. The Crown has not adequately partnered with Māori to enable a meaningful and enduring reform to take place. Participants recognised the current justice system as “settler-colonial” and that the underpinning of colonisation can no longer be ignored. Decolonising the justice system must be central to any work programme that may be developed
- > called for abolishment of the current prison system. A key recommendation is developing and implementing a comprehensive approach to change Aotearoa's justice system based on abolishing prisons by 2040. That approach would include: a basis in Te Ao Māori, tikanga Māori, Te Tiriti o Waitangi and lived experience; high-trust relationships between Māori and all Crown agencies and departments; the Crown taking responsibility for colonisation and stopping all ongoing effects of colonisation; disestablishing Oranga Tamariki; and the justice system reflecting the true intentions of *Puao-Te-Ata-Tu* and *He Whaipanga Hou*.

The purpose of the Long-Term Insights Briefing is to outline a vision for the future, like many of the reports that have gone before it. But significant change has not occurred. The system has known what to do but has not done it because of a lack of will and the fear of public perception. This must change.

**“There is strong scientific evidence for putting resources into crime prevention, early intervention (identifying and mitigating risk), and a smarter approach to rehabilitation and subsequent social cohesion for those already in the criminal-justice system – not for building more prisons”**

*(Professor Peter Gluckman (2018) Using evidence to build a better justice system: the challenge of rising prison costs, page 4)*



## Ngā whakatupato | The risks

The Long-Term Insights Briefing notes changes which increased the prison population disproportionately affected Māori, while recent changes which caused a drop in the prison population were not as advantageous for Māori.<sup>29</sup> This means if nothing changes in the approach taken in the justice system any further decline in prison population numbers will see a greater drop for non-Māori. The result is the proportion of Māori in prison will continue to increase.

An Aotearoa where all whānau, tamariki and mokopuna are thriving, connected and are able to exercise tino rangatiratanga over their lives and destinies does not happen when Māori are in prison. In Te Ao Māori being imprisoned is seen as degrading and considered the same as being taken captive. Imprisonment, like captivity, profoundly affects an individual's personal, emotional and spiritual state and their mana and tapu.<sup>30</sup> The impact of incarceration is not only limited to the individual who is imprisoned. The collateral effects and consequences spread from the individual outwards to whānau and the community. These reverberations can persist over time, increase in resonance, and then feedback upon themselves, generating long-lasting and potentially intergenerational effects.<sup>31</sup>

Allowing a system to continue that disproportionately negatively impacts Māori is an act of institutional and judicial racism and continued colonisation. There has been a lack of impact on outcomes and the more transformational options put forward in the many reports outlined above have not been tried with any real commitment. There has been a lack of leadership by successive governments and bureaucracies to do what is pono and tika by Māori in the long term. Indeed, the lack of action breaches international human rights obligations and Te Tiriti o Waitangi. Without a change in attitudes and a desire to change the risk is nothing will change.

29 For example, changing legal responses to violent offending had a greater impact on increasing Māori imprisonment, while more recent changes to bail practice have benefitted non-Māori to a greater degree. Similarly, the reverse onus conditions relating to offending on bail which contributed to remand growth have had a greater impact on the Māori remand population. Changes to the release regime made through the Parole Act in 2002 have also had a disproportionate impact on Māori. Māori are also more likely to serve their full sentence or near to their full sentence. Disparities in treatment experiences, which are, in turn, affected by a greater time spent on remand, play a key role in perpetuating release disparities. The more liberal approach to non-violent offending (and less serious violent and sexual offending) had a more beneficial effect for non-Māori.

30 Sir Kim Workman (2019) *Whānau ora and imprisonment*, in te Arotahi Series Paper September 2019 – 03

31 Tracey McIntosh and Kim Workman (2017) *Māori and Prison*, in The Palgrave Handbook of Australian and New Zealand Criminology, Crime and Justice



## Ngā āheinga | The opportunities

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Ināia Tonu Nei consider a just justice system should be developed, and the current system should become redundant. Prison is the final worst consequence of moving through the justice system. It is critical to focus efforts on preventing people entering into the criminal justice system in the first place. This means focusing on eradicating poverty, dealing with institutional racism, undertaking constitutional change, addressing social and health determinants including education and housing. It also means focusing on all parts of the justice system (e.g., police and court processes) to prevent people becoming more deeply immersed.

Ināia Tonu Nei see there are four interrelated opportunities/options which need to be progressed together as a package to get us firmly on a pathway to an Aotearoa where all whānau, tamariki and mokopuna are thriving and connected and are able to exercise tino rangatiratanga over their lives and destinies; and where we have no prisons. These recognise the current system has failed Māori and something radically different is urgently needed. They must all be co-designed with whānau, hapū, iwi and Māori organisations in a way that empowers. They are not options which the Crown could pursue alone; and it would not be appropriate for them to attempt to do so.

Ināia Tonu Nei supports real transformation. Ināia Tonu Nei does not support “browning” the current system or “tinkering around the edges” of it trying to make a “wrong system righter”. Such an approach reinforces the current system, rather than building whānau and communities, and continues to be ineffective with the wrong incentives.

Māori do not think in short election cycle timeframes, but rather in the long term and what future we want for our and everyone’s mokopuna. This means the proposed opportunities might not be palatable because progress won’t necessarily be seen within a narrow three-year election cycle. Ināia Tonu Nei thinks this short-sighted mind-set must change.

## Rūnanga aroha/ora | First: Habilitation centres

The *Hui Māori Report* notes the system at present relies on incarceration as the only means to hold people accountable for criminal behaviour and calls for this approach to stop. It also notes an immediate need to provide healing spaces for offenders. Ināia Tonu Nei reiterates the views of Hui Māori participants, those who attended our wānanga in May 2022 and those views outlined in *Turuki! Turuki!* and the *Roper Report*. The view is that we have an opportunity to change the purpose, paradigm and structure of the current system to one that is designed to habilitate, rehabilitate, protect tapu, restore mana and balance, restore fully functioning people back to their communities and take a whānau centric approach that is integrated within communities.

Ināia Tonu Nei therefore highlights the opportunity provided by setting up therapeutic habilitation centres which are focused on healing people instead of housing them within prisons. This model starts from the premise/goal that people should not be in prison and being deliberate about reducing prison numbers. It also recognises the literature that supports community-based rehabilitation and that which notes the pairing of tikanga Māori with western cognitive behavioural approaches to rehabilitation programmes and interventions for reducing offending (e.g., using the Risk Needs Responsivity (RNR) model) has not made any significant difference to Māori overrepresentation and has been resisted by Māori.<sup>32</sup>

Habilitation centres would be small, community based, iwi and hapū led, address the underlying causes of offending and develop the skills people need for a healthy and productive life. They would support people to address mental health and substance use issues; and deliver therapeutic wrap-around services to assist people's habilitation and eventual reintegration into the community with ongoing support after release. This would include education and other life skills. They would also support and nurture whānau relationships and enable whanaungatanga. Iwi, hapū and communities would determine where and how these centres are established and run.

32 Tracey McIntosh and Kim Workman (2017) *Māori and Prison*, in The Palgrave Handbook of Australian and New Zealand Criminology, Crime and Justice

## Ngā rautaki whakamana whakaora | Second: Decarceration and excarceration strategies

Another opportunity to move towards the Ināia Tonu Nei vision is to identify and implement decarceration and excarceration strategies as soon as possible. Excarceration refers to reducing the scope of the prison system over time by sending fewer people to prison in the first place using tactics of decriminalisation, diversion and minimisation.<sup>33</sup> Decarceration refers to getting people out of prison using mechanisms such as amnesty. Reforming elements within the criminal justice system that have a role in incarceration including the police, the courts, sentencing and parole boards is also important.<sup>34</sup> If decarceration/excarceration is a goal, all parts of the justice system would shift its focus from retribution to reparation, reconciliation and balance. Involvement with the police is usually the entry point to the criminal justice system. This is where there are opportunities for the police to address racism and to take an approach that prevents people from becoming more immersed in the system (e.g., police policy on the process of making an arrest and laying charges).

Examples of possible decarceration and excarceration strategies that could be considered are:



- > increasing the use of police warnings, diversion and out of court resolution of harm
- > broadening the range of potential outcomes from a court appearance to include muru or other mechanisms to restore balance (e.g., services or compensation provided by the “offender” to the victim and whānau) which would be determined by all involved parties
- > decriminalising non-violent minor offences and victimless crimes such as minor traffic infringements, possession of illegal drugs, disorderly conduct, loitering, and truancy<sup>35</sup>
- > increasing the scope of the Criminal Records (Clean Slate) Act 2004
- > considering the consistency in sentences/punishment between “crimes” (e.g., those focused on beneficiaries versus white collar tax fraud) and the appropriateness or cost/benefit of the tariff (not spending on incarcerating people for minor crimes of little value)

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33 Ti Lamusse and Tracey McIntosh (2022) *Prison Abolitionism, Philosophies, Politics and Practices*, in the *Aotearoa Handbook of Criminology*

34 John W Buttle (2017) *Imagining an Aotearoa/New Zealand without Prisons*

35 John W Buttle (2017) *Imagining an Aotearoa/New Zealand without Prisons*

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- > considering release from prison for those serving short term sentences (i.e., for non-serious offences)<sup>36</sup>
  - > reviewing release criteria in parole guidelines
  - > reconsidering the approach in bail laws including related to burden of proof and young people<sup>37</sup>
  - > stopping the practice of remanding someone in prison where they are not considered to have an appropriate address to bail to (provide support services instead)
  - > increasing the age of the Youth/Rangatahi Courts jurisdiction to include more young people<sup>38</sup>
  - > considering the appropriateness of arresting and charging children and young people<sup>39</sup>
  - > reviewing the Sentencing Act 2002 to ensure prison is only considered as a last resort and judges have discretion over sentences within the bounds of appropriately developed sentencing guidelines<sup>40</sup>
  - > considering whether the adult court system could benefit from incorporating practices of the Youth/Rangatahi court.<sup>41</sup>
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36 John W Buttle (2017) *Imagining an Aotearoa/New Zealand without Prisons*

37 John W Buttle (2017) *Imagining an Aotearoa/New Zealand without Prisons*

38 JustSpeak (2014) *Unlocking prisons, how we can improve New Zealand's prison system*

39 No Pride in Prisons (2016) *Abolitionist Demands: Toward the end of prisons in Aotearoa*

40 JustSpeak (2014) *Unlocking prisons, how we can improve New Zealand's prison system*

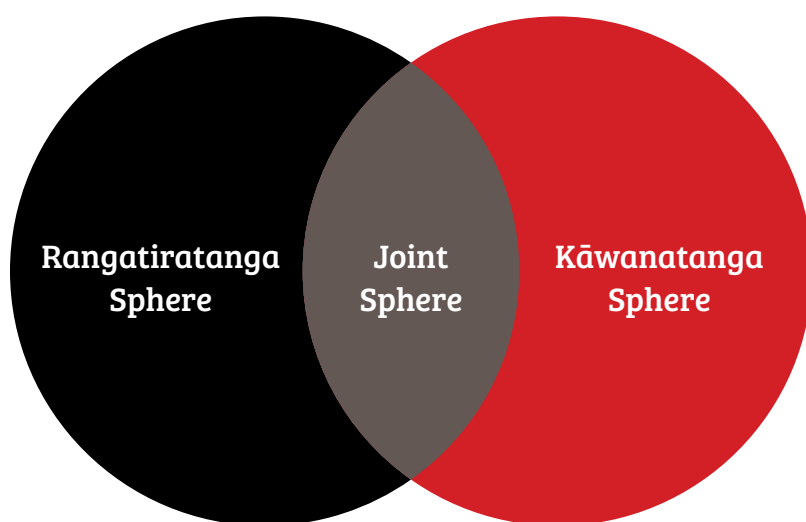
41 JustSpeak (2014) *Unlocking prisons, how we can improve New Zealand's prison system*

## Rangatiratanga | Third: Rangatiratanga

A further interrelated opportunity is rebalancing power and resourcing between the kāwanatanga sphere (the Crown) and the rangatiratanga sphere (whānau, hapū and iwi). This will further aid in decolonising the system and help the Crown fulfil its Te Tiriti o Waitangi obligations to work in partnership with tangata whenua.


As set out in *He whakaaro here whakaumu mō Aotearoa*,<sup>42</sup> one method through which to move towards tino rangatiratanga is to analyse the issue through the spheres of influence model. The spheres help to identify what can be considered a kāwanatanga sphere and rangatiratanga sphere. At present, the justice system falls exclusively under the kāwanatanga sphere and a key purpose of Ināia Tonu Nei is to assist with rebalancing power as intended under Te Tiriti o Waitangi.

If institutional racism is to be meaningfully addressed, it requires recognising that Māori models and perspectives involves more than the current agency efforts to “brown the system” with language and culture. It requires the system to acknowledge its own institutional racism and its effects (as outlined in the Long-Term Insights Briefing). It requires the system recognising the valid contemporary contribution rangatiratanga and tikanga Māori can make to overcome justice sector failings and its unwillingness to relinquish and share its resources and authority to enable this to occur.



<sup>42</sup> The independent working group on constitutional transformation (2016) *He whakaaro here whakaumu mō Aotearoa*. The Report of Matike Mai Aotearoa





Rangatiratanga is whānau, hapū and iwi claiming their authority, power and rights (guaranteed protection under article two of Te Tiriti o Waitangi) to develop and administer tikanga to ensure whānau are thriving, to prevent hara, to restore balance and provide healing after hara occurs. This would take place instead of the current colonial based punitive system and would be recognised as having equal legitimacy to the current system and process. Community-based responses to offending would be the default position of the criminal justice system. Approaches would be different around the motu according to local tikanga and there is no need or place for a national response. Part of enabling this, is to continue to progress constitutional transformation to recognise the equal status of the exercise of rangatiratanga. This is in line with the recent judgement of the Supreme Court<sup>43, 44, 45</sup> that notes the majority judges accept that tikanga was the first law of Aotearoa New Zealand and it continues to shape and regulate the lives of Māori.

Māori who work within the community know the needs of whānau more than anyone else. Whānau, hapū and iwi are already leading approaches across the motu and those should be supported, strengthened and further decolonised by shifting the current power balance to them, to further build capability and capacity to lead responses within the justice system.

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43 <https://www.courtsofnz.govt.nz/assets/cases/2022/2022-NZSC-114.pdf>

44 <https://www.teaomaori.news/tikanga-recognised-relevant-aotearoa-law-landmark-peter-ellis-ruling>

45 <https://www.rnz.co.nz/news/on-the-inside/476286/peter-ellis-supreme-court-decision-reaffirms-tikanga-relevance-to-legal-framework>



## Ora o te whānau | Fourth: Whānau wellbeing

The fourth interrelated area/opportunity Ināia Tonu Nei see as crucial for moving towards our vision is prioritising a focus on the broader drivers and social and health determinants that impact on whānau wellbeing and will help keep Māori out of prison. If we want whānau to thrive, be connected and be able to exercise tino rangatiratanga they need to be not living in poverty or affected by the myriad of social issues contributed to by colonisation (e.g., unemployment; poor housing, health and education etc; intergenerational trauma and distress). Therefore, ensuring all tamariki, mokopuna and whānau have access to the necessities of life should be a focus for both the kāwanatanga and rangatiratanga spheres. This will include mahi, housing, education (kōhanga reo, kura kaupapa, whare wānanga), health (focusing on Te Whare Tapa Whā: taha wairua, taha whānau, taha tinana and taha hinengaro), language and cultural identity and wellbeing. This is taking a wider view of justice and how to make improvements in that sector.

Ināia Tonu Nei reiterates the call from Hui Māori that the Crown must also consider a whole-of-government approach to transforming the justice system. That call is that the justice system must treat addictions to alcohol and other drugs as a health issue, instead of punishing those who need help. Hui Māori called for response teams to be created to engage with people who are arrested. Such teams would aim to address health or social issues before engagement with the courts.



# **E pao, tōrea | Urgent need for action**

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**The criminal justice system is failing Māori.**

Too many Māori are entering the criminal justice system.

Too many Māori are in prisons. Māori men are now more than six times more likely to be in prison than non-Māori men. Māori women are now almost 11 times more likely to be in prison than non-Māori women.

It is time to re-think.

**It is time to transform the criminal justice system.**

It is time for more, but different, action focused on building an Aotearoa where all whānau, tamariki and mokopuna are thriving, connected and able to exercise tino rangatiratanga over their lives without prisons.

Government cannot do this alone. Only by **working together to develop and achieve a better way of delivering justice** can we realise our 2040 vision of all whānau thriving in Aotearoa. We all want a more just, brighter and flourishing future for our tamariki, rangatahi and mokopuna.

**“Ka kuhu au ki te ture, hei matua mo te pani – I seek refuge in the law, for it is a parent of the oppressed”**

**- Te Kooti Arikirangi Te Turuki**

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