

The Howard League for Penal Reform

FACTSHEET: New Zealand | 3rd CYCLE UNIVERSAL PERIODIC REVIEW 2018

Criminal Justice: Over-incarceration

SUMMARY OF KEY ISSUES FROM PREVIOUS UPR CYCLES

In previous UPR cycles, **Canada, Ireland, and Thailand** made recommendations regarding the over-representation of Māori in prisons and the wider criminal justice system, while **Sweden, Iran and Canada** raised the related issue of structural discrimination. Māori over-representation still exists as a major issue in the New Zealand criminal justice system. Māori are 15.33% of the NZ population, but make up 50.7% of the prison population.¹ Treating prisoners in private prisons humanely has been raised by **Japan**. NZ's government will not open any new private prisons but has retained Serco to run the Auckland South Correctional Facility until 2040. The **Czech Republic** recommended raising the age of criminal responsibility to be in line with international conventions and provide separate juvenile prison facilities. NZ has expanded youth offenders to include 17 year olds in the Youth Court, but the age of criminal responsibility still remains at 10 years old.

NATIONAL FRAMEWORK

The current prison population is 10,435.² Māori are disproportionately imprisoned (50.7%).³ The Waitangi Tribunal report into the disproportionate reoffending rates for Māori found the Crown to be in breach of the Treaty of Waitangi.⁴ Remand prisoners have increased significantly due to unintended effects of the Bail Amendment Act 2013 creating greater difficulty to get bail.⁵ The presumption in favour of bail has been reversed for those accused of murder, dealing Class A drugs, and some reoffending. The guiding principles of the Sentencing Act 2002 emphasis fair sentencing, but the inclusion of disproportionate and indeterminate sentences (e.g. Three strikes law and preventive detention) are not consistent with those principles. 62% of prisoners have either a mental disorder or a substance use disorder; less than half (46%) with mental health or substance use disorders had received any form of treatment.⁶ Positive initiatives include: Iwi/Community Justice Panels,⁷ Community-based Rangatahi Youth Courts,⁸ Māori Focus Units⁹ and the recently announced Criminal Justice Advisory Group.¹⁰

CHALLENGES

Over-incarceration. This is the single biggest issue for the NZ criminal justice system. Factors contributing to this include:

- (a) disproportionate incarceration of Māori, NZ's indigenous people.
- (b) approx. one third of prisoners are on remand due to stricter bail requirements, inadequate housing, and
- (c) stricter parole requirements and difficulty accessing programmes identified by the Parole Board.

IMPACT

- (a) **Overcrowding & diminished conditions:** The lack of capacity in the system has led to increased double-bunking, plans to increase use of police jails, and insufficient staff (including a lack of case managers). There are also difficulties for prisoners accessing rehabilitation programmes in time for their Parole Board hearings. This can mean that prisoners are less likely to be paroled, causing an "arbitrary detention" effect.
- (b) **Exacerbation of the negative social, financial, and cultural impacts of imprisonment,** including the negative effects on the approx. 20,000 children with a parent in prison.¹¹ These issues impact on Māori and their families significantly more than other NZers because they are grossly over-represented in prisons.
- (c) People are remanded, or are not granted parole, because of **housing poverty**, not because of their offending.¹²
- (d) **Inadequate and inconsistent health, mental health and dental health care.** We have heard of prisoners losing teeth due to delayed access to dental care, prisoners in severe pain due to inadequate pain management, and ill-equipped medical facilities in prisons etc.

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RECOMMENDATIONS

1. **Provide more rehabilitative support for Māori prisoners** by increasing the number of Māori Focus Units from five to eight.
2. **Ensure greater use of alternatives to prosecution** by providing new funding to extend the capacity of Iwi/Community Justice Panels.
3. **Increase the use of non-prison sentences** by making home detention available for sentences under 3 years.
4. **Repeal the Bail Amendment Act 2013.**
5. **Reduce the negative impact of housing poverty on incarceration**, by allocating 5% of new government-funded social housing to accommodate those who would otherwise be refused bail or parole due to insufficient housing for the next four years.
6. **Establish more places on rehabilitation programmes** by providing new funding for Medium Intensity Rehabilitation Programmes (MIRP) and Drug Treatment Unit Programmes (DTU) to create 50 additional places for prisoners on each programme annually.

References/sources:

- ¹ StatsNZ "Information release: Maori Population Estimates: At 30 June 2017" (15 November 2017) <http://archive.stats.govt.nz/~media/Statistics/Browse%20for%20stats/MaoriPopulationEstimates/HOTPA30Jun17/MaoriPopulationEstimatesAt30Jun17HOTP.pdf>; Department of Corrections "Prison facts and statistics" https://corrections.govt.nz/resources/research_and_statistics/quarterly_prison_statistics.html
- ² Department of Corrections "Prison facts and statistics" (June 2018) https://corrections.govt.nz/resources/research_and_statistics/quarterly_prison_statistics/prison_stats_june_2018.html
- ³ Department of Corrections "Prison facts and statistics" (June 2018)
- ⁴ Waitangi Tribunal "Tu Mai te Rangil: WAI 2540" (2017) https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_135986487/Tu%20Mai%20te%20Rangi%20W.pdf
- ⁵ JustSpeak "Bailing out the Justice System: Reopening the Window of Opportunity" (April 2017) p. 1. https://d3n8a8pro7vhmx.cloudfront.net/justspeak/pages/129/attachments/original/1493195153/Bailing_out_the_Justice_System.pdf?1493195153
- ⁶ Department of Corrections "New Research into Mental Health Disorders Among New Zealand Prisoners" (June 2016) https://corrections.govt.nz/__data/assets/pdf_file/0006/846483/Comorbid_research_factsheet_-_June_2016.pdf
- ⁷ Walters, Laura "Pre-charge restorative justice initiative expanded" *Stuff* (28 March 2018) <https://www.stuff.co.nz/national/politics/102614436/precharge-restorative-justice-initiative-expanded>
- ⁸ Youth Court of New Zealand "Rangatahi Courts & Pasifika Courts" <https://www.youthcourt.govt.nz/about-youth-court/rangatahi-courts-and-pasifika-courts/>; Human Rights Commission "Rangatahi and Pasifika Youth Courts" <https://www.hrc.co.nz/your-rights/social-equality/our-work/fair-go-all/rangatahi-and-pasifika-youth-courts/>
- ⁹ Human Rights Commission "Māori Focus Units" <https://www.hrc.co.nz/your-rights/social-equality/our-work/fair-go-all/maori-focus-units/>
- ¹⁰ Ministry of Justice "Te Uepū | Advisory Group" (7 September 2018) <https://safeandeffectivejustice.govt.nz/advisory-group/>
- ¹¹ Social Policy Evaluation and Research Unit "What works: Improving outcomes for children with a parent in prison" (June 2015) p. 2. <http://www.superu.govt.nz/sites/default/files/What%20Works%20Children%20of%20Prisoners.pdf>
- ¹² JustSpeak "Bailing out the Justice System: Reopening the Window of Opportunity" (April 2017) p. 8. https://d3n8a8pro7vhmx.cloudfront.net/justspeak/pages/129/attachments/original/1493195153/Bailing_out_the_Justice_System.pdf?1493195153

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