



People Against Prisons Aotearoa

Submission to the Justice Select Committee on the Principles of the Treaty of Waitangi Bill

People Against Prisons Aotearoa (PAPA) is a prison abolitionist organisation working for a fairer, safer, and more just Aotearoa. Established in 2015, PAPA advocates for people in prison to ensure their human rights are met. We also push for changes to the Aotearoa New Zealand criminal justice system to create more just outcomes.

PAPA is opposed to this Bill in its entirety. We recommend that the Bill be rejected and that the government enact *Te Tiriti o Waitangi* as it was written.

There are a great many reasons to reject the Principles of the Treaty of Waitangi Bill and we are confident that these will be covered by a multitude of other submissions. For the sake of brevity our submission is focused on the corrections, police and justice systems of New Zealand.¹ In particular our submission will draw on our experience working with and advocating for people who are currently incarcerated in New Zealand.

This submission was prepared on behalf of People Against Prisons Aotearoa by Tom.

¹ In this submission, “New Zealand” refers to the settler-colonial country and “Aotearoa” refers to the land that was colonised.

Introduction

1. Māori are significantly overrepresented throughout our criminal legal system. Māori communities are policed more heavily, Māori are subjected to racist bias by police and in the Courts, and Māori men are incarcerated at a rate more than six times that of Pākehā. These statistics are even more disproportionate for wāhine Māori.
2. The Principles of the Treaty of Waitangi, as they have been incorporated in various pieces of legislation and interpreted by legal experts since 1975, create a legislated obligation on the Crown to address these outcomes. To date, efforts by the Crown have been largely tokenistic, inadequate and ineffective. This is evidenced by the fact that much of the disparity between Māori and Pākehā has worsened over time.
3. However the Principles of the Treaty of Waitangi Bill (“the Bill”) would remove the obligation on the Crown to take any further steps to improve outcomes specifically for Māori, and put at risk all of the existing measures being taken.
4. A genuine enactment of *Te Tiriti o Waitangi* as it was written, and respecting the rights of Māori as they existed at the signing of *Te Tiriti*, would lay the foundation for material improvements in outcomes for Māori.
5. We recommend this committee reject this Bill in its entirety, and investigate how *Te Tiriti o Waitangi* could be given effect as-written.
6. Our submission below discusses these points in greater detail.

The history of our police, justice and corrections systems in extinguishing tino rangatiratanga

7. Police were first used in Aotearoa to suppress Māori resistance to colonisation and enforce the colonial government’s breaches of *Te Tiriti o Waitangi*.² Prisons and the imposition of a British legal system were tools used intentionally by the colonial government to dispossess Māori of land and taonga; suppress Māori sovereignty and resistance to colonisation; and to disrupt Māori communities, social structures, economies and ways of life.³
8. In short, the assimilation of Māori into British legal structures, which was violently enforced through incarceration and military-style policing, laid the foundations for a Pākehā-dominated nation in which Māori have never truly been equal.
9. Alongside ongoing structural and institutional racism, the colonisation of Aotearoa continued through the 20th Century in many forms. These included the suppression of Māori language and culture in the education system, the railroading of Māori into

² Te Ara. “The Earliest Police Forces”. (2024). <https://teara.govt.nz/en/police/page-1>

³ Comyn, Catherine. *The Financial Colonisation of Aotearoa*. Tāmaki Makaurau Auckland, Aotearoa New Zealand: Economic and Social Research Aotearoa, (2023); Collins, David. *Fragile Foundations: The Application of Criminal Law to Crimes Committed in New Zealand between 1826 and 1907*. 1st ed. Chicago: Victoria University Press, (2024).

working class jobs, and the destruction of Māori families and communities through 'pepper potting' or the placement of Māori children into state care.

10. Colonisation continues in the present, where Māori still face significant barriers to housing, healthcare, education and workforce participation. Prisons and policing in New Zealand remain one of the most destructive and violent systems of colonisation active today.
11. Ultimately the rights of Māori as they existed prior to 1840, and which were affirmed in *Te Tiriti o Waitangi*, have never truly been upheld by the Crown. Instead, police, the British legal system, and prisons have been used to violently suppress attempts by Māori to realise those rights.
12. Today many of the social problems that we inadequately address with police, the Courts and prisons, arise from this long history of breaches of *Te Tiriti*. Instead of acting to remedy this situation, this Bill further extinguishes Māori rights and, in doing so, forecloses on opportunities to genuinely address these social problems.

The racism of our police, justice and corrections systems

13. Māori are significantly over-policed and over-incarcerated. Māori are five times as likely to come into contact with police as Pākehā, and are subject to police violence at a rate seven times higher than Pākehā.⁴ More than half of our prison population are Māori, six times higher than Pākehā relative to population size.⁵
14. A common response to the disproportionate policing and incarceration of Māori is that it is merely a reflection of Māori over-representation among the social problems and harms that cause people to come into contact with police or the justice system. This is only partially true.
15. Intergenerational and ongoing effects of colonisation have led to Māori being disproportionately impacted by social issues that drive higher rates of crime and offending among Māori communities. These issues include poverty, alienation, poor access to housing or healthcare, poor educational outcomes, and barriers to workforce participation, among others. However emphasis only on these issues, or the overrepresentation of Māori among social problems, leads to a deficit thinking that reinforces racist colonial mentalities.
16. Instead we must also consider the structural and legal bias that results in offending involving Māori being treated more seriously than other kinds of harm, often drastically out of proportion to the harm caused. For example, benefit fraud is prosecuted at a rate

⁴ New Zealand Police. "Tactical Options and Environment and Response Research Reports". (August 2024). <https://www.police.govt.nz/about-us/publication/tactical-options-and-environment-and-response-research-reports>

⁵ Ara Poutama Aotearoa Department of Corrections. "Prison facts and statistics - September 2024". (Retrieved November 11, 2024). https://www.corrections.govt.nz/resources/statistics/quarterly_prison_statistics/prison_facts_and_statistics_-_september_2024

ten times higher than tax fraud.⁶ 70% of people convicted of benefit fraud receive a prison sentence compared to only 18% of tax fraudsters.⁷

17. In general, the kinds of harm more often carried out by Pākehā are prosecuted less often and less harshly. In some cases, for example wage theft, these harms are not even in the Crimes Act.
18. The same is true for how these harms are represented in our public and media discourses. Crimes committed by Māori are sensationalized, racialised and moralised; while Pākehā crime is individualised, excused and in many cases simply not discussed.⁸
19. These are just some examples of how the law, our justice institutions and public discourses reflect and uphold Pākehā values and class status, while applying disproportionate control, punishment and moral judgement to Māori.
20. Beyond even these embedded forms of racism, Māori and Pākehā often have different experiences in the justice system for the same kinds of offending. At all levels and steps of the justice process, Māori are more likely to face harsher treatment and worse outcomes.
21. Māori are six times as likely to come into contact with police for no reason, and are subject to warrantless search at a rate four times higher than Pākehā.⁹ For the same offending, Māori are more likely to be charged, have more trouble finding legal representation, are less likely to be granted bail, plead guilty at higher rates, and are convicted at higher rates.¹⁰ Māori then face harsher sentencing, and are more likely to be given custodial sentences.¹¹ The effect of this amplifies through each step of the justice process, contributing to the grossly disproportionate incarceration rate of Māori.
22. While doubtless other groups experience racism and bias in our legal system, the New Zealand legal system has been shaped and structured by a history of colonial anti-Māori racism. In the long term, Crown support for tino rangatiratanga should see the creation of a genuine kaupapa Māori justice system in which Māori determine the values, laws, practices and outcomes.

⁶ Victoria University of Wellington. Te Herenga Waka. "Equal treatment?". (Accessed November 11, 2024). <https://wellington.wgtn.ac.nz/equal-treatment/index.html>.

⁷ Victoria University of Wellington, Equal Treatment.

⁸ McCreanor, Timothy, Jenny Rankine, Angela Moewaka Barnes, Belinda Borell, Raymond Nairn, and Anna-Lyse McManus. "The Association of Crime Stories and Māori in Aotearoa New Zealand Print Media". *Sites: A Journal of Social Anthropology and Cultural Studies* 11, no. 1. (2014):121-44. <https://doi.org/10.11157/sites-vol1iss2id240>.

Bull, Simone. "Crime and Māori in the Media". In: Deckert, A., Sarre, R. (eds) *The Palgrave Handbook of Australian and New Zealand Criminology, Crime and Justice*. Palgrave Macmillan, Cham. (2017). https://doi.org/10.1007/978-3-319-55747-2_49

⁹ People Against Prisons Aotearoa. "Input to Review of Search and Surveillance Act 2012".

<https://papa.org.nz/wp-content/uploads/2023/05/Input-to-review-of-Search-and-Surveillance-Act-2012.pdf>

¹⁰ New Zealand Department of Corrections, *Over-representation of Māori in the criminal justice system: An exploratory report*. Wellington, Department of Corrections. (2007).

¹¹ New Zealand Department of Corrections, *Over-representation of Māori in the criminal justice system*.

23. However there is already a mountain of debt owed to Māori for past and ongoing punishment, abuse, dispossession and violence by the state through the legal system. We need active steps to address this within the legal system as it currently exists.
24. The Principles of the Treaty of Waitangi establish an obligation to that end on the Crown. This Bill would remove that obligation, blunting current and future action, removing avenues for redress, and preventing broader transformation of our justice processes to a system that serves Māori and Pākehā equally and fairly.

Current implications of the Principles of the Treaty of Waitangi for the justice system

25. As discussed, the principles of the Treaty of Waitangi are the core legislated duty upon the Crown to improve outcomes for Māori. These have resulted in a range of initiatives that range from tokenistic or lip service, to genuine attempts to implement partnerships and kaupapa Māori pathways through the justice system.
26. However, even when taken together, current initiatives remain inadequate. Until there is genuine tino rangatiratanga in the justice process – which is to say full Māori control over the laws, processes and outcomes – progress will be limited by the Pākehā legal structures and values that create and maintain the existing inequitable outcomes for Māori. It is for this reason that we recommend the government give effect to *Te Tiriti* as it was written and signed.
27. However some individual initiatives or outcomes of the Treaty Principles have improved conditions for Māori, or taken steps towards addressing historic injustices. We risk losing these efforts if this Bill is enacted.
28. Kaupapa Māori resolution pathways through the justice system are one such example. In recent years these have shown to be effective at reducing re-offending, in part because they address the broader systemic failures that have contributed to offending.¹²
29. Similarly, the Rangatahi Courts that began in 2008 are an effective partnership between the Crown and Māori that emerged from the Treaty Principles. These Courts have achieved better outcomes because they help to reconnect rangatahi with their identity as Māori, engaging them with their whakapapa, culture, language, and people from their broader community.¹³
30. Within the prison system, the Principles of the Treaty have obliged Corrections to forge relationships with iwi and hapū. As with the Rangatahi Courts, these relationships open

¹² Awa Associates. *Research Report: Kaupapa Māori Resolution Pathways*. Wellington, Chief Victims Advisor to Government. (August 2022).

<https://chiefvictimsadvisor.justice.govt.nz/assets/Documents/Publications/KaupapaMaoriResolutionPathways.pdf>

¹³ Taumaunu, Heemi. "Rangatahi Courts of Aotearoa New Zealand – an update." *Maori Law Review*. (November 2014). <https://maorilawreview.co.nz/2014/11/rangatahi-courts-of-aotearoa-new-zealand-an-update/>

pathways for Māori in prison to reconnect with their whakapapa and te Ao Māori. This connection has significant benefits for wellbeing and reintegration.¹⁴

31. In many cases it is iwi organisations that fill the shameful gaps in our post-prison accommodation and reintegration programmes. Without the Treaty Principles it is unlikely that these gaps would be filled.
32. Elsewhere in prisons, Treaty Principles have ensured that mātauranga Māori and Māori models of wellbeing are incorporated into rehabilitation programs. Rehabilitation programs informed by tikanga, hauora and mātauranga Māori are up to twice as effective for Māori as other rehabilitation programs.¹⁵
33. The common theme throughout these more successful justice initiatives that have arisen from the Treaty Principles is the incorporation of tikanga Māori, Reo Māori, and the involvement of Māori communities in the justice process.
34. For Māori going through the justice system this creates a positive sense of identity as Māori, rooted in connection to, and belonging within, a community.¹⁶ A positive Māori identity provides an effective scaffold for pro-social living, helping to integrate (rather than “reintegrate”) people who may have never had the kinds of connections and relationships needed to lead healthy social lives.¹⁷
35. All of these initiatives have come about as a result of the Crown’s obligations under the Principles of the Treaty.
36. Unfortunately this government already has plans to remove reference to the Treaty of Waitangi from a range of legislation, and in the case of Corrections, has already done so.¹⁸ This reveals an imbalance of power in the supposed partnership legislated for by the Treaty Principles; an ongoing failure stemming from the Crown’s refusal to respect tino rangatiratanga or act in genuine partnership.
37. Under the status quo there is an avenue for redress through the Courts or Waitangi Tribunal when the Principles have not been upheld. This Bill would remove that avenue. Without the principles of partnership and protection in law, many of these programs and initiatives could disappear.

¹⁴ Quince, Khylee. Maori and the Criminal Justice System in New Zealand. In *Criminal Justice in New Zealand*, eds. Julia Tolmie, and Warren Brookbanks. 333–358. Wellington: LexisNexis. (2007).

¹⁵ Johnston, Peter. “The effectiveness of Corrections’ rehabilitation interventions with Māori”. *Practice: The New Zealand Corrections Journal*. 6, no. 2. (2018).
https://www.corrections.govt.nz/resources/research/journal/volume_6_issue_2_november_2018/the_effectiveness_of_corrections_rehabilitation_interventions_with_maori

¹⁶ Quince, Khylee. “Rangatahi Courts”. In Deckert, A., Sarre, R. (eds) *The Palgrave Handbook of Australian and New Zealand Criminology, Crime and Justice*. Palgrave Macmillan, Cham. (2017).
https://doi.org/10.1007/978-3-319-55747-2_47

¹⁷ Quince, Rangatahi Courts.

¹⁸ Hurihanganui, Te Aniwa. “Treaty provisions set to be scrapped from Corrections Amendment Bill”. 1news. (June 6, 2024).

<https://www.1news.co.nz/2024/06/06/treaty-provisions-set-to-be-scrapped-from-corrections-amendment-bill/>;
Walters, Laura. “Govt to change or remove Treaty of Waitangi provisions in 28 laws”. Newsroom. (October 14, 2024).
<https://newsroom.co.nz/2024/10/14/govt-to-change-or-remove-treaty-of-waitangi-provisions-in-28-laws>.

Conclusion

38. We once again call on the committee to reject this Bill in its entirety. Rather than seeking to redefine the Principles in a way that extinguishes Māori rights that existed for hundreds of years prior to the signing of the Treaty, the government should be looking at ways of more genuinely honouring those rights as they were recognised in *Te Tiriti o Waitangi*.
39. This means the removal of barriers that Māori face in education, health, housing and work, all of which create the conditions of social harm. It means guaranteeing tino rangatiratanga and mana motuhake. In the case of the justice system it means working towards the abolition of prisons, and support for genuine kaupapa Māori justice pathways.
40. Until we have a government committed to these things, the Treaty Principles have an insufficient but important role in addressing New Zealand's ongoing colonial injustices. We cannot allow this Bill to redefine them.