



4th CYCLE UNIVERSAL PERIODIC REVIEW OF NEW ZEALAND

DETENTION

Right to liberty and inherent dignity; right to be free from torture and cruel, inhumane, or degrading treatment

Summary of key recommendations from previous UPR cycle

The Government supported recommendations to:

- Prevent and combat discrimination in the criminal justice system.
 - Enhance the rights of Māori and increase rehabilitative support to Māori prisoners.
 - Ensure all prisoners receive equal treatment in accordance with minimum standards for the treatment and conditions of persons in detention.
 - Carry out further work to reduce prison overcrowding.
 - Take immediate steps to combat the use of solitary confinement in all health care facilities and places of detention.
 - Ensure the provision of physical and mental health services for those in detention facilities.
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Issues

1. Overrepresentation of Māori in criminal justice system and in other detention settings

The former Government put numerous strategies, programmes, and initiatives in place to reverse this trend, including through the Department of Corrections' core strategic plan, *Hōkai Rangi 2019 – 2024*, which seeks to deliver better outcomes and reduce the overall proportion of Māori in prison. However, concerns have been raised about the effectiveness of the implementation of *Hokai Rangi*, and Māori continue to be overrepresented at all stages of New Zealand's criminal justice and State care systems.

- Māori make up **52 percent** of the prison population, despite making up 17% of the New Zealand population.ⁱ
- **66 percent** of women in New Zealand's prisons are Māori.ⁱⁱ
- Māori are **more likely to be subject** to community and inpatient compulsory mental health treatment orders than other ethnicities.ⁱⁱⁱ
- Māori are **five times more likely** to be secluded in acute inpatient and forensic mental health facilities.^{iv}
- Māori are **grossly overrepresented** and subject to abuse in State care.^v

The new Government has agreed to scrap the previous government's target of reducing the prison population by 30 per cent and instead indicated it will increase funding to ensure there is sufficient prison capacity, and to invest in the construction of new youth justice beds.

Recommendation to New Zealand Government

- Increase efforts to reduce the disproportionately high number of Māori in all detention settings, including prisons and State care, specifically by recognising, respecting, and supporting Māori self-determination.



2. Conditions of detention

Despite initiatives to improve general conditions of detention, overcrowding, poor material conditions, and staff shortages persist across detention facilities. Prolonged and indefinite solitary confinement continues to be used, along with spit hoods and pepper spray, and increased use of force, which disproportionately affect Māori, Pasifika and disabled inmates. Ongoing staff shortages across detention settings are contributing to:

- Extended time spent in cells and without access to exercise in the fresh air,
- Restrictions on in-person visits (including with family and legal representatives), and
- Reduced access to education, rehabilitation, and reintegration services.

New Zealand's prison system is not adequately equipped to fully address the specific needs of women in prison, nor is the government acting with urgency despite clear evidence of harms to women occurring under the current regime. Solitary confinement and punitive practices are frequently used against women in prison.^{vi} In 2023, the New Zealand Courts found that the Department of Corrections had discriminated against a group of more than 60 women who were transferred to prisons outside their local regions, without taking their personal circumstances into account, and preventing their access to rehabilitation programmes.^{vii}

Recommendations to New Zealand Government

- As a matter of urgency, lift restrictions on the minimum entitlements of persons deprived of their liberty in places of detention.
- Amend the Corrections Act 2004 and Corrections Regulations 2005 to eliminate the use of pepper spray in detention.
- Ensure solitary confinement is used only in exceptional cases as a last resort, for as short a time as possible, and subject to independent review.
- Continue to take steps to reduce the number of women in prison, in particular those held on pre-trial detention.
- Provide gender-responsive, trauma-informed measures to support women in prison in accordance with international human rights standards and obligations including the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules).
- Implement timely, effective and measurable steps to ensure all detaining agencies are equipped to provide adequate mental health support to persons deprived of their liberty.

3. Pre-trial detention

Pre-trial detention is still frequently used in New Zealand and there are no maximum time limits for pre-trial detention set out in law. The prison population is projected to increase in the long term, driven by an increase in the remand population.^{viii}

As of December 2023, approximately **43 percent of the prison population was being held on remand**, with **Māori making up 52 percent** of those being held. More than **half of the female prison population** are being held on remand.^{ix}

Recommendations to New Zealand Government

- Reduce the rate of people being held on prolonged pre-trial detention.
- Introduce a maximum time limit for pre-trial detention.

4. Detention in mental health facilities

While the former Government committed to eliminating seclusion in mental health facilities, legislation still allows for involuntary detention and compulsory treatment on the basis of mental impairment. Seclusion, physical, and chemical restraints and other restrictive practices continue to be used on persons with psychosocial or intellectual disabilities, particularly Māori.

Recommendations to New Zealand Government

- Provide an update and continue working to meet the goal of zero seclusion and the introduction of new mental health legislation.
- Take steps to recognise, respect and support Māori rangatiratanga (sovereign authority) and self-determination to design their own solutions and implement their own initiatives to address Māori mental health in accordance with tikanga Māori.

5. Detention of children and young people

The minimum age of criminal responsibility (the age that children can be prosecuted for criminal offending) in New Zealand is currently 10 years old, contrary to the recommendation of the Committee for the Rights of the Child to raise the minimum age of criminal responsibility to 14 years for all children, regardless of the offence.

Despite criticism from the Youth Court and Committee for the Rights of the Child, New Zealand courts retain the power to remand a child into police custody, which results in children and young people being held in police cells until appropriate residential accommodation becomes available for a child or young person subject to a custody order.

Recommendations to New Zealand Government

- Raise the minimum age of criminal responsibility to 14 years old to align with international human rights standards.
- Consider repealing the practice of remanding children into police custody and reduce the proportion of children in secure youth justice residences who are on remand.
- Recognise, respect, and support Māori rangatiratanga (sovereign authority) and self-determination to design and implement their own initiatives to address Māori children and young people in detention in accordance with tikanga Māori.

6. Detention of asylum seekers

In 2023, the Government introduced a Bill which would allow for the detention of large groups of asylum seekers arriving to New Zealand by sea for up to 28 days (up from four days under the current legislation) without a warrant, and six months with a warrant.

Recommendation to New Zealand Government

- Urgently withdraw the Immigration (Mass Arrivals) Amendment Bill, which increases the detention time of asylum seekers who arrive in New Zealand as part of a mass group.



Endnotes

- i Ara Poutama Aotearoa | Department of Corrections 'Prison facts and statistics – December 2023' available at https://www.corrections.govt.nz/resources/statistics/quarterly_prison_statistics/prison_facts_and_statistics_-_december_2023
- ii See, Wāhine - E rere ana ki te pae hou Women rising above a new horizon, Women's Strategy | 2021 - 2025 An oranga-focused framework for restoration and reclamation, p. 7, https://www.corrections.govt.nz/_data/assets/pdf_file/0004/44644/Corrections_Wahine_-_E_rere_ana_ki_te_pae_hou_2021_-_2025.pdf
- iii Office of the Director of Mental Health and Addiction Services, Regulatory Report 1 July 2021 to 30 June 2022 at p. 9 available at <https://www.health.govt.nz/system/files/documents/publications/odmhas-regulatory-report-sep22.pdf>.
- iv Ibid, p. 29.
- v Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions "Māori experiences of abuse in care" available at <https://www.abuseincare.org.nz/our-inquiries/maori-experience-of-abuse-in-care/>.
- vi See Dr Sharon Shalev, *First, Do No Harm: segregation, restraint, and pepper spray use in women's prisons in Aotearoa New Zealand* (2021), available at <https://tikatangata.org.nz/our-work/first-do-no-harm-segregation-restraint-and-pepper-spray-use-in-womens-prisons-in-new-zealand>. See also Janis Adair, Chief Inspector, Office of the Inspectorate [Shining a light on women in New Zealand prisons](#) (February 2023).
- vii *Wallace v Chief Executive of the Department of Corrections* [2023] NZHC 2248, at [75], [90] and [98]. See also *Wallace v Chief Executive of the Department of Corrections* [2023] NZHC 592 at [27].
- viii Ministry of Justice, Justice Sector Projections 2022-2032, p. 17, <https://www.justice.govt.nz/assets/Documents/Publications/y9h8p-2022-Justice-Sector-Projections-Report.pdf>
- ix Ara Poutama | Department of Corrections 'Prison statistics – Remand and sentenced snapshot' available: https://www.corrections.govt.nz/resources/statistics/quarterly_prison_statistics

